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May 6, 2019

Mr. Alexander C. Schoch, Interim Director  
Surface Mining and Reclamation Division  
Railroad Commission of Texas  
P.O. Box 12967  
Austin, Texas 78711-2967

Railroad Commission  
of Texas  
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**MAY 07 2019**

Surface Mining Division

RE: Luminant Mining Company LLC ("Luminant")  
Monticello-Thermo Mine, Permit No. 5G  
Revision Application No. 34, Supplemental Document No. 1  
H-Area Reclamation Plan

Dear Mr. Schoch:

Luminant is transmitting with this letter three (3) copies of Revision Application No. 34, Supplemental Document No. 1 ("SD1") in response to Staff's technical review comment letter dated September 21, 2018. Revision Application No. 34 to Permit No. 5G was originally submitted by letter dated July 31, 2017 to revise the postmine topography of portions of the H Area and request approval of a revised reclamation plan for the final pit and adjoining area, including general design plans for Permanent Impoundment H-03.

This revision application would also facilitate the execution of a reclamation plan prepared collaboratively with the City of Sulphur Springs ("City") and the Railroad Commission of Texas ("Commission") over the course of several years in support of long-term plans captured in concept by a Development Agreement ("Agreement") executed by the City and Luminant in a Special City Council Meeting on October 16, 2018. The executed Agreement is included within the Introduction section of this document.

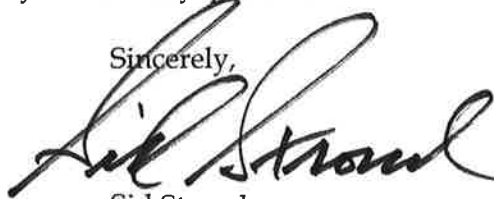
Please note the Introduction section of SD1 contains a more detailed historical chronology of Revision Application No. 34 for your consideration. Luminant respectfully submits and requests that this application be processed Administratively since, in accordance with 16 Texas Administrative Code §12.226(a)(1), the proposed changes do not constitute a significant departure from the approved method of mining or reclamation which would significantly change the effect the mining operation would have on persons impacted by Luminant's operations or on the environment. In summary: 1) No change in the permit area is proposed; 2) No other persons will be impacted in a material way by the proposed changes, nor is there a new landowner affected. Luminant owns the subject land in fee, as well as adjoining property, and the proposed changes will not have impacts to properties outside of the permit area.

Mr. Alexander C. Schoch, Interim Director  
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3) No changes are proposed to the mining method that would have a negative or material impact on the environment. The Thermo Mine, Permit No. 5G is currently designated as a "Reclamation Permit" since the Commission was formally notified on March 24, 2016 that surface coal mining operations had permanently ceased. No change in status is proposed by this application; and 4) No changes are proposed to the reclamation procedure that would have a negative impact on the environment. In fact, the proposed changes provide opportunity for future local municipality economic benefit. Approval of Revision Application No. 34 is being respectfully requested from the Commission.

Please contact Scott Mills at (214) 875-9090 if you have any questions.

Sincerely,



Sid Stroud

SS/SM/tg  
Enclosure

**LUMINANT MINING COMPANY LLC**  
**MONTICELLO-THERMO MINE, PERMIT No. 5G**  
**REVISION APPLICATION No. 34**  
**Supplemental Document No. 1**

**May 6, 2019**

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Surface Mining Division

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**LUMINANT MINING COMPANY LLC**  
**MONTICELLO-THERMO MINE, PERMIT No. 5G**

**REVISION APPLICATION No. 34**  
**Supplemental Document No. 1**

**May 6, 2019**

**INTRODUCTION**

Supplemental Document No. 1 to Revision Application No. 34 is being provided in response to Staff's technical review comment letter dated September 21, 2018. Revision Application No. 34 to Permit No. 5G was originally submitted by letter dated July 31, 2017 to revise the postmine topography of portions of the H Area and request approval of a revised reclamation plan for the final pit and adjoining area, including general design plans for Permanent Impoundment H-03. This revision application would also facilitate the execution of a reclamation plan prepared collaboratively with the City of Sulphur Springs ("City") and the Railroad Commission of Texas ("Commission") over the course of several years in support of long-term plans captured in concept by a Development Agreement ("Agreement") executed by the City and Luminant in a Special City Council Meeting on October 16, 2018. The executed Agreement is included within the Introduction section of this document.

Revision Application No. 34 replaced and superseded Revision No. 29 ("Request for Additional Time to Complete Backfilling and Grading, 61 acres, H-Area") approved July 13, 2016, and was preceded by extensive consultation with RRC Staff and RRC Leadership.

On December 5, 2017, the Commission informed Luminant that Revision Application No. 34 had been determined to be a significant revision. On January 19, 2018, the Commission informed Luminant that the revision was "incomplete" and "not accepted for filing" and processing of the application was suspended pending Luminant's assessment of Staff's listed concerns, a subsequent meeting, and the submittal of supplemental information to address the concerns necessary for a complete application. By letter of February 15, 2018, Luminant requested reconsideration of the December 5, 2017 determination of significance and the January 19, 2018 determination of incompleteness in an effort to find Revision No. 34 complete and acceptable for processing as an administrative permit revision.

A historical chronology and other supporting documentation was also provided by Luminant in that same request. The request was followed by a May 1, 2019 meeting with RRC SMRD and Legal Staff to discuss the merits of Luminant's request for reconsideration.

By letter of September 21, 2018, the Commission responded to Luminant's February 15, 2018 letter requesting the subject application be processed administratively. In this letter Director Denny Kingsley provided a legal opinion by Staff Attorney David Cooney regarding our request and noted that processing of the suspended application will proceed once responses are provided to the issues identified by Staff's letter of January

19, 2018, or if Luminant wished to proceed with processing the application as a significant revision. By letter of April 18, 2019, Luminant informed the Commission that it did not wish to proceed with processing this application as a significant revision, but rather intended to respond to the noted issues of January 19, 2018 that rendered the application deficient and precluded processing as an administrative revision. Processing of this application as an administrative revision would also be in keeping with consultation and planning meetings with RRC Staff during 2017 in preparation for submittal of Revision Application No. 34 where guidance was provided by SMRD on aspects of the revision that would preclude a significant determination.

Luminant respectfully submits and requests that this application be processed Administratively since, in accordance with 16 Texas Administrative Code §12.226(a)(1), the proposed changes do not constitute a significant departure from the approved method of mining or reclamation which would significantly change the effect the mining operation would have on persons impacted by Luminant's operations or on the environment. In summary:

- No change in the permit area is proposed.
- No other persons will be impacted in a material way by the proposed changes, nor is there a new landowner affected. Luminant owns the subject land in fee, as well as adjoining property, and the proposed changes will not have impacts to properties outside of the permit area.
- No changes are proposed to the mining method that would have a negative or material impact on the environment. The Thermo Mine, Permit No. 5G is currently designated as a "Reclamation Permit" since the Commission was formally notified on March 24, 2016 that surface coal mining operations had permanently ceased. No change in status is proposed by this application.
- No changes are proposed to the reclamation procedure that would have a negative impact on the environment. In fact, the proposed changes provide opportunity for future local municipality economic benefit.

The material contained within this document is fashioned similar to the approved permit application and where possible, revised and/or added material is labeled as "Revision No. 34, SD1" and should be replaced and/or added as noted in the Table of Contents of this document.

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**DEVELOPMENT AGREEMENT  
BETWEEN  
LUMINANT GENERATION COMPANY LLC  
LUMINANT MINING COMPANY LLC  
AND  
THE CITY OF SULPHUR SPRINGS**

**DATED OCTOBER 16, 2018**

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<b>Exhibit O</b>	<b>FM 1870 Agreements</b>
<b>Exhibit P</b>	<b>County Road 2307, County Road 2309 Order and Agreements</b>
<b>Exhibit Q</b>	<b>Temporary Private Road Crossing Agreement (KCS Rail Line)</b>

## DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is entered into pursuant to Section 212.172, and Chapters 271 and 380 of the Texas Local Government Code between the City of Sulphur Springs, Texas (the "City"), a municipal corporation organized under Article 11 of the Texas Constitution, whose address is 125 South Davis Street, Sulphur Springs, Texas 75482, acting by and through its City Manager, and Luminant Mining Company LLC and Luminant Generation Company LLC (together, "Luminant"), each a Texas limited liability company, with principal offices at 6555 Sierra Drive, Irving, Texas (City and Luminant are sometimes individually referred to as a "Party", and collectively as the "Parties").

### RECITALS

**WHEREAS**, the City is a home rule city in Hopkins County, Texas; and

**WHEREAS**, Luminant owns approximately 4,901.228 acres of unincorporated real property in Hopkins County, Texas (the "Land"), more particularly and separately described in the attached Exhibit "A", some of which is located in the extraterritorial jurisdiction of the City ("ETJ"); and

**WHEREAS**, portions of the Land were permitted for mining operations by Luminant, which mining has been completed; and

**WHEREAS**, a portion of the Land, more particularly and separately described in the attached Exhibit "A", was permitted for mining operations by Luminant, which mining has been completed (the "Reclamation Tract"), and is now subject to the reclamation requirements of the Railroad Commission of Texas ("RRC"), which requirements are codified in 16 Texas Administrative Code § 12.1 et seq. (the "Coal Mining Regulations") and governed by Permit Nos. 5G and 56, issued by RRC to Luminant, as amended from time to time (together with the other permits listed herein, the "Permits"), and secured by a blanket collateral bond posted by Luminant (the "Bond"), which is required to be maintained with the RRC in an amount sufficient to cover the approved reclamation cost until release of all reclamation obligations; and

**WHEREAS**, the Reclamation Tract is also subject to the rules and regulations of various other regulatory agencies including, but not limited to, the Texas Commission on Environmental Quality ("TCEQ") and the United States Army Corps of Engineers (the "Corps") (the regulations, collectively, the "Environmental Regulations"); and

**WHEREAS**, Luminant, in furtherance of its operations, placed or constructed certain Improvements and Facilities (both defined herein) on the Land, and will, subject to this Agreement, install certain Improvements on the Reclamation Tract, namely a water impoundment, stream channels and forested wetlands (the Improvements, Facilities and Land, collectively referred to as the "Property"); and

**WHEREAS**, the City desires to own and flexibly develop, use and maintain the Property as a multi-use site for the benefit of its residents; and

**WHEREAS**, Luminant desires (i) to transfer the Property to the City, and (ii) to prepare the Property to be developed by the City into a multi-use site, all subject to (a) Luminant's ability to continue the current use of certain portions of the Land, which includes Luminant's ability to continue reclamation operations; (b) Luminant's ability to remain in compliance with the Coal

Mining Regulations, the Permits, the Environmental Regulations and any other rules and regulations covering its reclamation obligations or its occupancy of the Land; (c) the final approval by the RRC of all necessary permit revisions, and the release of the Reclamation Tract from the Permits, the Bonds, the Environmental Regulations and from any other programs or permits covering reclamation obligations (the "Releases"); and (d) the City's guarantee that the City's current or future land-use and development regulations and/or ordinances shall not be applicable to the Reclamation Tract and any Facilities or Improvements located thereon until the Releases have been provided in full and final form, in consideration for which, among other things, Luminant agrees to enter into this Agreement; and

**WHEREAS**, the City desires to permit Luminant to continue reclaiming the Reclamation Tract in accordance with (i) the Coal Mining Regulations, the Permits, the Environmental Regulations, and any other rules and regulations covering reclamation obligations on the Reclamation Tract, and (ii) this Agreement, without the Reclamation Tract being subject to current or future land-use and development regulations and/or ordinances of the City; and

**WHEREAS**, the RRC supports reclamation activities and changes of land-use that result in beneficial land use by the general public and, specifically, local communities; and

**WHEREAS**, the Land is eligible to be the subject of a development agreement under Section 212.172 of the Local Government Code and an economic development agreement under Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, this Agreement is entered into in compliance with Section 212.172 and Chapter 380, in order to address the desires of Luminant and the City; and

**WHEREAS**, the City will be the beneficiary of the reclamation activities undertaken by Luminant, which activities constitute services for purposes of Chapter 271 of the Texas Local Government Code; and

**WHEREAS**, the City Council has found that development of the Property in compliance with this Agreement will serve a public purpose, be in the best interests and welfare of the public, and provide future benefit to the economy of the City; and

**WHEREAS**, the City Council authorized and approved this Agreement at a special meeting of the City Council subject to the Open Meetings Act in compliance with the laws of the State of Texas and the ordinances and Charter of the City on October 16, 2018 (Resolution No. 1155), that approved this Agreement with Luminant on the terms and conditions herein; and

**WHEREAS**, Luminant and the City acknowledge that this Agreement is binding upon the City and Luminant, and their respective heirs, successors and assigns for the Term (defined herein) of this Agreement; and

**WHEREAS**, this Agreement is to be recorded in the Real Property Records of Hopkins County.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties hereto agree as follows:

## SECTION 1. PURPOSES, AUTHORITY AND CONSIDERATION

1.1 Authority. Authority for Luminant and the City to enter into this Agreement exists under the City Charter of the City, Section 212.172 and Chapters 271 and 380 of the Texas Local Government Code, and such other statutes as may be applicable. The approval of this Agreement is subject to and contingent upon authorization granted by the City Council.

1.2 Benefits. The City desires to enter into this Agreement to enhance the City's ability to plan for, enhance, coordinate and control the development of the Property. The City acknowledges that such enhancement and control will allow it to develop the Property as a multi-use site and be competitive in attracting industry and business to the City. The City desires to attract business and tax revenue for the benefit of the City and its residents, and thereby stimulate economic growth in the future, provide for efficient use of the Property, and serve a valuable public purpose.

Luminant desires to enter into this Agreement to facilitate the efficient and cost-effective reclamation and re-use of the Property and will benefit from the certainty provided by this Agreement with respect to its reclamation obligations and annexation, and from commitments made by the City with respect to the existing and planned Facilities and Improvements.

1.3 Consideration. The benefits to the Parties set forth in the Recitals and herein, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is acknowledged by the Parties.

1.4 Effective Date. This Agreement shall be effective on the date this Agreement is fully executed by both Parties.

1.5 Term. The term of this Agreement will commence on the Effective Date and continue for fifteen (15) years (the "Term").

1.5.1 Extensions to Term. Prior to the termination of the Term, and with one hundred eighty (180) days written notice to the City, Luminant, or any of its respective successors or assigns, may extend this Agreement for additional periods of five (5) years each if the Permits, the Bond, the Environmental Regulations and another rules and regulations covering reclamations obligations have not been fully and finally released; provided, however, that (i) Luminant is not in Material Breach of the Agreement, and (ii) such additional periods do not cumulatively exceed the limitations of State law.

1.5.2 Early Termination. Luminant may terminate this Agreement at any time after Closing but prior to the end of the Term, including as extended, if necessary, provided that:

1.5.2.1 the Permits, the Bond, the Environmental Regulations and any other rules and regulations covering reclamation obligations have been fully and finally released; or

1.5.2.2 the City has not satisfied the Conditions Precedent (defined herein) by the date set in Section 4 hereof.

## SECTION 2. PURCHASE AND SALE

2.1 Purchase and Sale. Luminant agrees to sell and convey and the City agrees to purchase and pay for the Property. For clarity, the Property shall include all rights of Luminant whatsoever

in and to the Property, including without limitation all of Luminant's right, title and interest in and to adjacent streets, alleys, strips, gores, rights-of-way, privileges, easements, interests and appurtenances thereto. Luminant's rights and obligations under the Permits, its rights under the Exclusive Easement, and the rights otherwise reserved herein are hereby excluded from the Property.

2.2 Purchase Price. The purchase price for the Property is One Hundred and No/100 Dollars (\$100.00), and other good and valuable consideration consisting of the mutual covenants, restrictions, obligations and provisions of this Agreement.

2.3 Description of Property. The Property consists of and includes the following Land, Facilities, Improvements and other real and personal properties.

2.3.1 Land. The Land is 4901.228 acres more or less, as identified on Exhibit "A" attached hereto.

2.3.1.1 Description. The Parties acknowledge and agree that some of the descriptions describing portions of the Land are based on deed references, including metes and bounds, which are based on surveys conducted decades ago. The Parties acknowledge and agree that the Property description attached hereto is sufficient to accurately identify the Property to be conveyed until delivery and approval or deemed approval of a Survey of the Property. Upon approval or deemed approval of the Survey, the Property description set forth in the Survey shall be the description of the Property for all purposes of this Agreement.

2.3.1.2 Surveys. Luminant will furnish to the City any existing surveys or property descriptions of the Land that are in Luminant's possession. Should the City require a recertification of such surveys, recertification will be done at the City's sole cost and expense. For those portions of the Land that do not have a survey or a metes and bounds deed description, a legal description of the Land will be made by a registered professional land surveyor at the City's expense.

2.3.2 Facilities. Existing facilities on the Land include, but are not limited to, office and maintenance buildings, tank farms (bulk storage tanks), warehouse and warehouse yards, and storage and parking areas and rail sidings, as identified on Exhibit "D" attached hereto (the "Facilities").

2.3.3 Improvements. Existing Improvements on the Land include, but are not limited to, certain wetlands, haul roads, rail lines (including the KCS switch and rail crossing), culverts, access roads, drop structures, and the FM 1870 Bridge. Luminant will construct, as future Improvements, the Water Impoundments, stream channels and forested wetlands on the Land, as identified on Exhibit "E" attached hereto (the "Improvements").

2.3.3.1 Water Impoundments. The existing and future ponds or water bodies ("Water Impoundments"), some of which will require the City to secure authorization from TCEQ to store and/or use the water stored within such Water Impoundments, as listed with more specificity on Exhibit "L":

- a. A-18 Pond;
- b. B-15 Pond;

- c. B-17 Pond;
- d. B-18 Pond;
- e. C-06 Pond;
- f. D-03 Pond;
- g. G-13 Pond; and
- h. H-03 Pond.

2.3.4 Existing Water Right. At Closing, Luminant will transfer to the City Water Right No. 5906 ("Water Right No. 5906"), which currently authorizes the storage and use of the water in the B-15 Pond, B-18 Pond and D-03 Pond, subject to retaining from the City the right to use Water Right No. 5906 through the completion of reclamation and receipt of all Releases.

2.3.5 Waste Landfills. The Land includes four (4) industrial solid waste disposal sites, all of which may contain Class III solid wastes, have been closed pursuant to and in compliance with TCEQ rules pertaining to industrial solid waste management, and have been deed recorded in the Hopkins County Real Property Records, copies of which are attached hereto as Exhibit "F".

2.3.6 Monitoring Wells and Dewatering Wells. As depicted on the attached Exhibit "G", there are monitoring wells and dewatering wells associated with Luminant's reclamation obligations. Such "Monitoring Wells and Dewatering Wells" will remain under Luminant management and control, subject to the Exclusive Easement, which management and control will transfer to the City upon the expiration of the Exclusive Easement.

2.3.7 Permits. At the completion of reclamation and upon satisfaction of the requirements under any Environmental Regulation or Coal Mining Regulation, and, specifically, after all of Luminant's obligations related to discharge to the Water Impoundments have been met and the Bond has been released as to all areas covered under the Texas Pollutant Discharge Elimination System permit no. WQ0004122000 (the "TPDES Permit"), Luminant will transfer said TPDES Permit to the City.

If the City desires to operate the existing sewer plant, which is covered under the TPDES Permit, prior to said transfer, the City must acquire a separate permit from TCEQ.

2.4 Excluded Property. The Property shall not include:

2.4.1 those certain tracts of land, identified in Exhibit "B" and totaling 148.964 acres, which are encumbered with a right of first refusal for the benefit of a third-party (the "Excluded Tracts"), ownership of which shall be retained by Luminant;

2.4.2 the 1.3 acre tract owned by Oncor; and

2.4.2 the silo, conveyor and crusher, all of which Luminant shall remove during its reclamation operations.

**2.5 Property Inspection.** The City shall have the right, until ten (10) days prior to Closing, to i) inspect the Property and verify the feasibility and suitability of the Property for the City's intended use, and ii) conduct all desired studies, tests, and inspections of the Property that the City deems advisable; provided, however, the City may only enter upon the Property to conduct inspections upon one (1) business days' notice to Luminant; provided further, however, neither the City nor its agent will be permitted to dig or excavate, nor conduct any soil borings or backhoe trenching on any portions of the Land without the advanced written consent of Luminant, which consent may be withheld by Luminant in its sole and absolute discretion. The City shall backfill and restore any hole or trench resulting from any approved inspection as soon as reasonably practicable after completing the inspection. The City agrees to provide evidence to Luminant, before the City or its agents enter the Property, of the City's policies or its agents' policies of general liability insurance with limits of not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit covering liabilities for personal injury, death and property damage arising out of activities on or about the Property by the City and its agents and contractors.

**2.6 Property Condition.** The Property is being sold on an "AS IS, WHERE IS" basis, and no warranty or representation (except as expressly with respect to title), either express or implied, concerning or pertaining to the Property is made by Luminant. LUMINANT DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS PERTAINING TO THE PROPERTY, OR ANY PART THEREOF, WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING ANY WARRANTY OF TITLE (EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT), MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OF GOOD AND WORKMANLIKE SERVICE. LUMINANT SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE RECLAMATION OF THE PROPERTY HAS BEEN COMPLETED OR WILL BE COMPLETED ACCORDING TO ANY STANDARD OR REGULATION OTHER THAN THAT ESTABLISHED BY THE PERMITS, THE COAL MINING REGULATIONS, AND THE ENVIRONMENTAL REGULATIONS, OR THAT THE RECLAMATION HAS RENDERED OR WILL RENDER THE PROPERTY SUITABLE FOR THE CITY'S PURPOSE. LUMINANT SHALL HAVE NO LIABILITY TO THE CITY FOR LOSS CAUSED BY SETTLING OR SHIFTING SOILS, IT BEING UNDERSTOOD BY THE PARTIES THAT THE CITY SHALL HAVE AN INDEPENDENT INSPECTION CONDUCTED BY A QUALIFIED EXPERT BEFORE COMMENCING ANY DEVELOPMENT OF THE PROPERTY. IN NO EVENT SHALL LUMINANT BE HELD LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES ARISING FROM THE CITY'S OWNERSHIP OR USE OF THE PROPERTY. The occurrence of the Closing shall constitute an acknowledgment by the City that the Property was accepted without representation or warranty, express or implied (except as set forth herein or in the special warranties of title set forth in the Deed) and otherwise in an "AS IS", "WHERE IS", and "WITH ALL FAULTS" condition based solely on the City's own inspection. The acknowledgments and agreements of the City set forth in this Section shall survive Closing and shall not be merged therein.

**2.7 Environmental Disclaimer.** EXCEPT AS SET FORTH HEREIN, LUMINANT DOES NOT AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCES (AS HEREINAFTER



DEFINED) ON, UNDER OR ABOUT THE PROPERTY OR THE COMPLIANCE OR NONCOMPLIANCE OF THE PROPERTY WITH THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, THE SUPERFUND AMENDMENT AND REAUTHORIZATION ACT, THE RESOURCE CONSERVATION RECOVERY ACT, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL ENVIRONMENTAL PESTICIDES ACT, THE CLEAN WATER ACT, THE TEXAS NATURAL RESOURCES CODE, THE TEXAS WATER CODE, THE TEXAS SOLID WASTE DISPOSAL ACT, THE TEXAS HAZARDOUS SUBSTANCES SPILL PREVENTION AND CONTROL ACT, ANY FEDERAL, STATE OR LOCAL "SUPERFUND" OR "SUPER LIEN" STATUTE, OR ANY OTHER STATUTE, LAW, ORDINANCE, CODE, RULE, REGULATION, ORDER OR DECREE REGULATING, RELATING TO OR IMPOSING LIABILITY (INCLUDING STRICT LIABILITY) OR STANDARDS OF CONDUCT CONCERNING ANY HAZARDOUS SUBSTANCES (COLLECTIVELY, THE "HAZARDOUS SUBSTANCE LAWS"). For purposes of this Agreement, the term "Hazardous Substances" shall mean and include those elements or compounds which are contained on the list of hazardous substances adopted by the United States Environmental Protection Agency and the list of toxic pollutants designated by Congress or the Environmental Protection Agency or under any Hazardous Substance Laws. THE CITY IS ADVISED THAT THE PRESENCE OF JURISDICTIONAL WETLANDS OR WATERS OF THE UNITED STATES, TOXIC SUBSTANCES, INCLUDING ASBESTOS AND WASTES OR OTHER ENVIRONMENTAL HAZARDS, OR THE PRESENCE OF A THREATENED OR ENDANGERED SPECIES OR ITS HABITAT MAY AFFECT THE CITY'S INTENDED USE OF THE PROPERTY. THE CITY FURTHER ACKNOWLEDGES AND AGREES THAT, BEING GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE CITY WILL BE PURCHASING THE PROPERTY PURSUANT TO ITS INDEPENDENT EXAMINATION, STUDY, INSPECTION AND KNOWLEDGE OF THE PROPERTY AND THE CITY IS RELYING UPON ITS OWN DETERMINATION OF THE VALUE OF THE PROPERTY AND USES TO WHICH THE PROPERTY MAY BE PUT, AND, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY LUMINANT. THE CITY FURTHER ACKNOWLEDGES AND AGREES THAT WITH RESPECT TO ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY, THAT LUMINANT HAS NOT MADE AND WILL NOT BE OBLIGATED TO MAKE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION, AND LUMINANT MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. The acknowledgments and agreements of the City set forth in this Section shall survive Closing and shall not be merged therein.

2.8 Water and Water Impoundments. The Water Impoundments may currently be exempted from permitting through exemptions related to Luminant's mining and reclamation operations. The City acknowledges that it may not qualify for the exemptions Luminant is currently afforded. The City further acknowledges that its subsequent, post-Bond release changes of water uses, which shall be at the City's sole discretion, cost and expense, from agricultural to another purpose may trigger water rights requirements by TCEQ.

2.9 Disclosures. Luminant hereby discloses to the City, and the City hereby acknowledges, that portions of the Property have been used for a variety of functions related to the operation and maintenance of a mine and the equipment associated with such operation and maintenance. As well, portions of the Land have been used historically by prior owners and/or tenants for farming, hunting and ranching, and in connection with such uses prior owners and/or tenants may have used on the Land fertilizers, insecticides, pesticides, and other potentially hazardous materials commonly used in connection with such operations, and may have operated on the Land gasoline and diesel powered farm equipment and vehicles that typically result in incidental deposits of oil, gasoline, diesel or other hydrocarbons on the Land.

2.9.1 Luminant shall deliver to the City or provide the City with reasonable access to copies of all reports, including but not limited to environmental reports, and data and inspections held by or for Seller, of which Seller has knowledge, regarding the Land and the Property; this explicitly includes a Phase I environmental site assessment ("Phase I") to be performed on the loading station, shop and office area to be performed at the request of Luminant for the purposes of this Agreement ("Luminant's Phase I").

2.9.2 Subject to the insurance requirements in Section 2.5 herein, the City, at its sole discretion, cost and expense, will perform or have performed a Phase I on all or portions of the Land ("the City's Phase I").

2.9.3 Subject to the insurance requirements in Section 2.5 herein, the City, at its sole discretion, cost and expense, will perform or have performed a Phase II environmental site assessment ("the City's Phase II") based on the findings of the City's Phase I.

2.9.3.1 The Baseline Report. The City's Phase II shall establish the baseline environmental condition for all portions of the Land assessed under the City's Phase II. For all portions of the Land which are not assessed during the City's Phase II, Luminant's Phase I, the City's Phase I, or the collective information from both Phase Is shall establish the baseline environmental condition.

2.9.3.2 Notwithstanding that the transfer of the Land is being done on an as is, where is basis, as noted in Section 2.6 herein, and that Luminant makes no warranty or representation to the condition of the Land, except as explicitly stated in this Agreement, the Baseline Report(s) sets forth any known or suspected recognized environmental conditions affecting the subject Land as of the Closing. The Parties agree that there shall be a rebuttable presumption that environmental conditions identified through any means after the Closing that were not identified in the Baseline Report(s) represent environmental conditions that first arose after the Closing and which, as between Luminant and the City, shall be the sole responsibility of the City.

2.9.3.3 The Baseline Report(s) is not a representation or warranty by Luminant regarding the environmental or physical conditions of the subject Land, and Luminant shall have no liability in connection with the accuracy or completeness thereof.

The information referred to in this Section 2.9 is made available without representation by Luminant or recourse to Luminant. The City relies on such information at its own risk. Without limiting the generality of the foregoing, the City acknowledges that Luminant has made no representations (expressed or implied) regarding the accuracy of such information, the qualifications of the parties preparing such information, or the conclusions set forth therein.

2.10 No Indemnification. LUMINANT SHALL HAVE NO OBLIGATION TO INDEMNIFY OR HOLD THE CITY HARMLESS FROM AND AGAINST CLAIMS, SUITS, LIABILITIES, COSTS, LOSSES, DAMAGES, OR EXPENSES FOR BODILY INJURY, DEATH, OR PROPERTY DAMAGE CAUSED BY, ARISING FROM, OR RELATING TO THE USE OF THE PROPERTY BY THE CITY, THE CITY'S SUCCESSORS OR ASSIGNS, OR THEIR EMPLOYEES, AGENTS, GUESTS, LESSEES, LICENSEES OR INVITEES.

### **SECTION 3. PROJECT; CONTROL OF RECLAMATION; GOVERNING REGULATIONS**

3.1 Project Defined. The "Project" established by the Agreement will be a multi-phased development project aimed at reclaiming the Property to an agricultural and/or industrial and commercial ("I/C") standard, for the benefit of the City's future marketing and/or development of the Property, in accordance with the Permits, the Coal Mining Regulations, and the Environmental Regulations. The Project includes all work by Luminant to satisfy any obligation of Luminant under any of the Permits, the Coal Mining Regulations, or the Environmental Regulations.

3.1.1 Luminant will submit the necessary administrative and/or significant revision applications to Mine Permit No. 5G and Mine Permit No. 56 to facilitate compliance with the Coal Mining Regulations and in furtherance of the Project, including, but not limited to, reclamation, land use, structure designs, bond map updates, surface and groundwater monitoring reports or monitoring changes, conversion of temporary structures to permanent, design packages, well transfers, reclamation cost estimates, groundcover and productivity reports, vegetation monitoring and Bond release.

3.1.2 Luminant will submit the following to the Corps in furtherance of the Project:

- a. An environmental covenant or deed restriction, in substantially similar form as attached hereto in Exhibit "H", for protection of certain jurisdictional Waters of the United States ("WOTUS") on the Land within Thermo A-1 Area and H-Area (zones C4 and D2), subject to further discussion with the Corps at the maturity of the mitigation effort and presentation to the Corps for concurrence on closure (estimated to occur in 2027, approximately).

3.1.3 The following portions of Property will be open to access to the City immediately upon Closing, subject to the retained right of entry provided herein, and shall not be subject to the Exclusive Easement:

- a. Any areas of the Property that have received Releases as of Closing.

3.1.4 Luminant shall continue reclamation of the following areas, which are part of the Reclamation Tract. All temporary diversions, ponds and roads need to be approved by the RRC as permanent or reclaimed.

3.1.4.1 A-1 Area. Luminant intends to reclaim the A-1 Area to the post-mine land uses approved in Permit No. 56 or revisions thereof, including three Water Impoundments, as delineated on Exhibit "L", pastureland, forestry, fish and wildlife habitat and such features as wetlands and streams.

3.1.4.2 H-Area. Luminant intends to reclaim the H-Area to the post-mine land uses approved in Permit No. 5G or revisions thereof, including a Water Impoundment (H-03 Pond), pastureland, forestry, fish and wildlife habitat and such features as wetlands and streams.

- a. H-03 Pond to be constructed by Luminant and have a capacity of 475-acre feet.

3.1.4.3 G-Area. Luminant has completed all dirt work and re-vegetation in the G-Area.

3.1.4.4 Central Area. Luminant intends to reclaim the Central area to the post-mine land uses approved in the Permits or revisions thereof, including, but not limited to, pastureland, forestry, fish and wildlife habitat and such features as wetlands and streams:

- a. Teardown the silo, conveyor and crusher, and leave the concrete footings and slab in place;
- b. Remove any remaining lignite fines down to the stockpile base, leaving the stockpile base, if in useable condition, to be used by the City as a parking or storage area;
- c. Remove existing concrete slabs and footings, other than those mentioned in subparagraph (a) above, three feet (3') from the surface of the Land; and
- d. Allow the City to use, subject to its ability to be beneficially re-used, any concrete that is left after the removal of the silo and concrete slabs and footings.

3.1.5 Wetlands. The City agrees that upon conveyance of the Land and thereafter in its ownership of the Land, that the City will not impact or disturb any jurisdictional WOTUS or their associated riparian buffers until such time Luminant has met and satisfied the mitigation requirements of the Section 404 permit authorizations ("404 Permits"), listed in Exhibit "I", and such 404 Permits are finally and fully closed. The City acknowledges that prior to such closure of 404 Permit No. SWF-2012-00122 in the A-1 Area, unless otherwise negotiated with the Corps, long-term protection must be created for the affected wetland and WOTUS which will be in the form of legal deed recordation, conservation easement or other such other form of site protection required by the Corps.

Additionally, the City agrees that Luminant shall retain a right of entry to conduct surveys and studies for the evaluation of the WOTUS needed to verify that mitigation requirements are being met per the 404 Permits and Environmental Regulations. Likewise, the City agrees to allow Luminant to manage the WOTUS as needed to ensure completion and protection of mitigation to that standards of the 404 Permits and Environmental Regulations. Such management shall include, but not be limited to, supplemental vegetation planning, management of invasive species, repair of erosion and sediment control. Such rights of entry and management will be contained in the Exclusive Easement, attached hereto as Exhibit "J".

#### 3.1.6 Placeholder.

3.2 Reclamation Standards and Requirements. All reclamation of the Property undertaken by Luminant will be in accordance with the Coal Mining Regulations, the Permits, the Bond, the Environmental Regulations and any other rules and regulations of other governmental agencies covering reclamation obligations, including but not limited to the Environmental Regulations related to former mining land or other real property impacted in the course of mining operations. The Parties acknowledge that there are currently twelve (12) open and active environmental permits attached to the Land, a complete listing of which is attached hereto as Exhibit "K". Luminant's compliance with applicable regulations shall be determined solely by the governmental agency with enforcement jurisdiction over those regulations.

The timing and sequencing of the reclamation of the Property will be determined and completed at the sole discretion of Luminant consistent with the Permits, the Coal Mining Regulations and the Environmental Regulations.

3.3 City Regulations. The City guarantees and agrees that, during the Term of this Agreement, the City will not (i) zone the Land or create a zoning classification on the Land that prohibits reclamation operations or impairs or impedes Luminant's ability to satisfy its reclamation obligations in a reasonable, prompt and efficient manner, (ii) require Luminant to submit, apply for, or record a subdivision plat, development plat, site plan, or building or development permit as a condition for performing its reclamation obligations; (iii) impose any standard or requirement for reclamation of the Land in addition to those existing under the Permits, the Coal Mining Regulations and the Environmental Regulations; (iv) require Luminant to construct any streets, bridges or other public improvements on the Land; (v) require Luminant to undertake any study of the Land for any purpose other than to provide the City with copies of any report or study Luminant submits to the RRC, TCEQ, the Corps, or other governmental agency; (vi) impose any impact fees or other fees, assessments, or taxes upon Luminant in conjunction with the performance of its reclamation obligations or occupation of the Land under the terms of this Agreement; (vii) require Luminant to comply with any wetland, storm water, flood plain, water quality or other environmental regulation of the City; or (viii) apply any other ordinance or other rule prohibiting the reclamation operations on the Land or impairing or impeding Luminant's ability to satisfy its reclamation obligations in a reasonable and efficient manner.

Except as provided herein, the City is authorized to enforce, in the same manner the regulations are enforced within the City's boundaries, all of the City's regulations and planning authority that do not interfere with, impair, or impede Luminant's reclamation obligations or the ability of Luminant to satisfy the Coal Mining Regulations, the Permits, the Environmental

Regulations or any rules or regulations of another governmental agency covering reclamation obligations, or the ability of Luminant to achieve full and final release of the Permits, the Bond, the Environmental Regulations or any other rules and regulations of other governmental agencies covering reclamation obligations.

### 3.4 Vested Rights.

3.4.1 Chapter 245 of the Local Government Code. This Agreement constitutes a "permit" within the meaning of Chapter 245 of the Texas Local Government Code and provides the City fair notice of the Project, as such term is defined therein. Notwithstanding any other provisions of this Agreement, or any applicable state law, the Project shall be deemed in progress, and not dormant for purpose of Section 245.005 of the Local Government Code, as long as the Bond remains outstanding. Except as provided in this Section, Luminant does not, by entering into this Agreement, waive (and Luminant expressly reserves) any right that Luminant may now or hereafter have with respect to any claim (a) of vested or protected development or other property rights arising from Chapter 245 of the Texas Local Government Code, as amended, or otherwise arising from common law or other state or federal laws; or (b) that an action by the City constitutes a taking or inverse condemnation of all or any portion of the Land. This Agreement shall not terminate or be modified in the event that one or all of the state statutes referenced herein shall be repealed or modified.

3.4.2 Section 43.002 of the Local Government Code. The City acknowledges and agrees that, as of the Effective Date, Luminant has commenced use of the Land for the performance of its reclamation obligations, and that nothing herein shall be deemed a waiver of Luminant's rights under Section 43.002 of the Texas Local Government Code to continue that use after annexation of all or any portion of the Land by the City.

3.5 Rights and Responsibilities. The Parties shall have the following obligations and responsibilities related to the Property.

3.5.1 Luminant's Rights and Responsibilities. As long as any portion of the Property is under the Bond or otherwise subject to an Environmental Regulation or a Permit, Luminant shall have the following rights and responsibilities related to said portions of Property:

- a. reclamation, at its sole cost and in accordance with Coal Mining Regulations, the Permits, the Bond and any other rules and regulations covering reclamation obligations on the Property;
- b. full and sole authority over the reclamation operations and to make any regulatory decisions regarding the Property covered under the Bond, including those related to its development;
- c. sole, exclusive authority to consult with RRC, TCEQ, the Corps or any other agency or entity with jurisdiction over the mining and reclamation obligations on the Land; and

- d. no title to, interest in or authority over the Property or any portion thereof will transfer to the City until Closing, and such will not transfer except as expressly stipulated in this Agreement.

3.5.2 City's Rights, Responsibilities and Authority. The City shall have the following rights and responsibilities, and authority:

- a. assist Luminant in all respects in getting approval from the RRC to undertake this Project;
- b. assume from Luminant the obligations related to the Facilities and Improvements, which include, but are not limited to, those maintenance and removal obligations related to the main switch and rail crossing on the KCS switch and rail crossing, including but not limited to the obligations contained within that certain Temporary Private Road Crossing Agreement attached hereto and made a part hereof as Exhibit "Q", the FM 1870 Bridge, including but not limited to the obligations contained within that certain Agreement to Accept Donation for Highway Construction Projects and the Order from the Commissioners' Court of Hopkins County, attached hereto and made a part hereof as Exhibit "O", and Hopkins County Road 2307 ("CR 2307") and Hopkins County Road 2309 ("CR 2309"), including but not limited to the obligations contained in the Hopkins County Commissioners' Court orders and agreement attached hereto as Exhibit "P";
- c. own and maintain any Improvements added to the Land, or that the City otherwise installs on the Land ("City-Added Improvements");
- d. consult with and secure from TCEQ the right to impound and use water in amounts sufficient to allow the RRC to declare the Water Impoundments permanent (the "Water Rights").

In its attempts to obtain the Water Rights, the City shall:

- i. ensure that Luminant is apprised of and has the opportunity to participate in all meetings with the TCEQ or any other governmental agency;
- ii. provide Luminant with quarterly written updates, delivered within ten (10) days following the end of each calendar year quarter, on the status of the Water Rights, including what actions were taken in the preceding quarter and what actions it intends to take in the upcoming quarter; and
- iii. satisfy the Conditions Precedents stated in Section 4 hereof.

3.5.3 Joint Responsibilities. The City and Luminant shall work together to submit, on or before December 31, 2018, a joint application to the TCEQ for the amendment of Water Right No. 5906, which amendment shall:

- a. add the A-18 Pond, B-17 Pond, C-06 Pond, G-13 Pond and H-03 Pond; and
- b. add recreational and other uses to the B-15 Pond, B-18 Pond, D-03 Pond and A-18 Pond, B-17 Pond, C-06 Pond, G-13 Pond and H-03 Pond; and
- c. explain the relationship of the Parties, as it relates to said joint application and Water Right No. 5906; and
- d. not transfer Luminant's ownership of, nor impair Luminant's use of or compliance with Water Right No. 5906 until such has been transferred to the City in accordance with Section 2.3.4 herein.

3.5.4 Miscellaneous. For clarity, the City shall not be required to provide any financial support to Luminant for the development of the natural elements of the reclamation plan which are regulated by the RRC and will not have any authority or ability to direct the development or change those aspects which are regulated by the RRC.

For clarity, Luminant shall not be responsible for the costs or expenses associated with constructing, nor be required to provide any financial support to the City to construct or maintain any City-Added Improvements. Further, although the amendment referenced in Section 3.5.3 will be submitted by Luminant, Luminant shall not be responsible for the costs or expenses associated with completing the application for amendment or obtaining the Water Rights, including but not limited to those costs and expenses for modeling Water Right No. 5906.

Notwithstanding Luminant's regulatory control of those portions of the Property covered by the Permits or the Bond and that Luminant can design such portions of the Property and amend such designs from time to time at its sole discretion, Luminant will allow the City to review the design and any subsequent changes to it, and will endeavor, to the extent Luminant determines to be feasible in its sole judgment, to accommodate the City's desires and future uses of the Reclamation Tract in finalizing the Reclamation Tract design and in the developing of the Reclamation Tract.

#### **SECTION 4. CONDITIONS TO CLOSE**

Luminant shall have no obligation to convey the Property to the City until the City has satisfied the following conditions (the "Conditions Precedent"):

1. Receive authorization and approval from the City Council to enter into this Agreement; and
2. Secure from TCEQ Water Rights in an amount sufficient to allow the RRC to declare the Water Impoundments permanent; and
3. Submit joint application to the TCEQ for the amendment of Water Right No. 5906 on or before December 31, 2018; and
4. Submit application to the TCEQ for any additional Water Rights determined by TCEQ to be needed for the Water Impoundments within ninety (90) days of said TCEQ determination; and



5. Obtain an updated survey containing a sufficient description of the boundary of the Land and the Reclamation Tract; and
6. Deliver to Luminant an order from the Hopkins County Commissioners' Court that the terms and obligations in the orders and agreements related to CR 2307 and CR 2309, attached hereto as Exhibit "P", have been transferred to the City and that Luminant has been released of all liabilities and obligations related thereto; and
7. Deliver to Luminant confirmation from the Texas Department of Transportation that the terms and obligations in the agreements related to the FM 1870 Bridge, attached hereto as Exhibit "O", have been transferred to the City and that Luminant has been release of all liabilities and obligations related thereto; and
8. Deliver to Luminant the executed Landowner Consultation and Exclusive Easement.

Notwithstanding any other provision of this Agreement, with the exception of number 3 in the above list, if the Conditions Precedent are not satisfied by December 31, 2019, then this Agreement shall terminate and be of no force and effect, and the Parties shall have no further obligations to one another hereunder, except with respect to the obligations described herein as surviving termination of the Agreement.

The Parties may, by mutual written agreement, extend the period to satisfy any of the Conditions Precedent.

## **SECTION 5. CLOSING; OWNERSHIP**

5.1 Closing Date. Within ten (10) days after all Conditions Precedent are satisfied ("Closing"), Luminant will convey the Property to the City subject to the provisions of this Agreement via a special warranty deed.

5.2 Closing Deliverables. At Closing, Luminant and the City shall cause to be delivered the following items, as applicable:

5.2.1 Luminant shall cause to be delivered to the City:

5.2.1.1 Title Policy. Luminant shall furnish to the City, at the City's expense, an Owner's policy of title insurance (the "Title Policy") in the amount of the appraisal district value, dated at Closing, insuring the City against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances), and the following exceptions (the "Permitted Exceptions"):

- a. The standard printed exception for standby fees, taxes and assessments.
- b. Utility easements.
- c. All easements and restrictions of record, and any easements shown on a survey.
- d. Reservations or exceptions otherwise permitted by this Agreement or as may be approved by the City in writing.

- e. The standard printed exception as to discrepancies, conflicts, or shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements.
- f. The Permits, and any other encumbrances to the Land being held to satisfy Luminant's reclamation obligations.

5.2.1.2 Executed all bills paid affidavits, bills of sale, assignments, or other instruments of transfer, and any record drawings, project manuals or any other documentation, if any, related to the conveyed Facilities and Improvements.

5.2.1.3. Special Warranty Deed. Luminant shall deliver a special warranty deed ("Deed") conveying fee simple title to the Property, free and clear of any liens or other encumbrances, subject only to the Permitted Exceptions.

5.2.2 The City shall cause to be delivered to Luminant:

5.2.2.1 the Exclusive Easement(s), as attached hereto in form as Exhibit "J"; and

5.2.2.2 an executed Waiver of Landowner Consultation, as attached hereto in form as Exhibit "M".

5.3 Closing Costs. All costs of Closing shall be apportioned equally between the Parties, except each Party shall pay its own attorneys' fees.

5.4 Luminant's Representations. Luminant represents and warrants to the City:

5.4.1 There are no existing contracts or agreements entered into by Luminant, either recorded or unrecorded, written or oral, affecting the Property, or any portion thereof or the use thereof, other than the Permitted Exceptions; and

5.4.2 Luminant has no knowledge of any pending or threatened condemnation proceedings with respect to the Property.

5.5 The City's Representations. The City represents and warrant to Luminant:

5.5.1 The City will make every effort to secure the Water Rights from TCEQ in an expeditious manner, and will allow Luminant to participate in the process; and

5.5.2 From and after Closing, the City agrees to accept and will own, operate and maintain the Property, subject to the terms set forth herein and those of the Exclusive Easement, and shall be responsible for all costs and obligations associated with same, including but not limited to those associated with the FM 1870 Bridge as delineated in Exhibit "O", CR 2307 and CR 2309 as delineated in Exhibit "P", and the KCS switch and rail crossing as delineated in Exhibit "Q", but with the exception of any costs related to Luminant's reclamation obligations. With respect to the Reclamation Tract, until Releases have been received, the City shall not use the Reclamation Tract or allow any use of the Reclamation Tract that is inconsistent with, interferes with, impairs or impedes Luminant's ability to satisfy its reclamation obligations. For clarity, the Parties agree that any subdivision and sale of all or any portion of the Reclamation Tract, prior to the Releases

being received, to a third-party end user for development shall be deemed a use inconsistent with Luminant's reclamation obligations.

## **SECTION 6. EXCLUSIVE EASEMENT; CONTINUATION OF RECLAMATION**

6.1 Exclusive Easement. At Closing, the City will grant and convey to Luminant an exclusive easement over the Reclamation Tract (the "Exclusive Easement"), providing for the reclamation of the Reclamation Tract and access to the Reclamation Tract across the remainder of the Land. Such Exclusive Easement will be in the form attached hereto as Exhibit "J", and will run with the affected Land until all Releases have been received. Upon receipt of the Releases, Luminant will file in the Hopkins County Real Property Records a document releasing such released portions of the Land from the Exclusive Easement.

For clarity, at no time will the Reclamation Tract or any portion thereof be open to the public or available for use by the City in a manner inconsistent with Luminant's reclamation obligations.

6.2 Luminant's Use of the Property. Post-Closing, the City hereby consents and agrees to, at no cost to Luminant, Luminant's use and unrestricted access to any and all portions of the Land within the boundaries of Permit No. 5G and Permit No. 56 that may be reasonably necessary to comply with its obligations under this Agreement, or under the Environmental Regulations.

## **SECTION 7. THE CITY'S WAIVER OF GOVERNMENTAL IMMUNITY, REGULATORY ACTION**

7.1 Chapter 271 of the Texas Local Government Code. The City and Luminant agree that Luminant's reclamation activities on the Reclamation Tract constitute services benefitting the City's ownership of the Land for purpose of Chapter 271 of the Texas Local Government Code. From and after the Effective Date, the City waives its governmental immunity for any issues, disputes, conflicts, suits, actions at law or equity, or actions for declaratory relief, injunctive relief, or mandamus arising from or relating to this Agreement with regard to the provision of these services to the fullest extent permitted by Section 271.152 of the Texas Local Government Code.

7.2 Section 212.172 of the Texas Local Government Code. The City and Luminant acknowledge and agree that this Agreement is a valid development agreement authorized in all respects under Section 212.172 of the Texas Local Government Code. The Parties expressly agree that the rights and obligations of the Parties under this Agreement shall survive the City's acquisition of title to the Land, in that this Agreement imposes rights and obligations on the Parties with regard to the Reclamation Tract that shall survive Closing, which rights and obligations are the consideration for Luminant's conveyance of the Land to the City. From and after the Effective Date, the City waives its governmental immunity for any issues, disputes, conflicts, suits, actions at law or equity, or actions for declaratory relief, injunctive relief, or mandamus arising from or relating to this Agreement to the fullest extent permitted by Section 212.172.

7.3 Chapter 245 of the Texas Local Government Code. This Agreement is a permit for purposes of Section 245.001(1) of the Texas Local Government Code. From and after the Effective Date, the City waives its governmental immunity for any issues, disputes, conflicts, suits, actions at law or equity, or actions for declaratory, injunctive relief, or mandamus arising from or relating this Agreement to the fullest extent permitted by Section 245.006 of the Texas Local Government Code.

7.4 Chapter 380 of the Texas Local Government Code. This Agreement is an economic development agreement for purposes of Chapter 380 of the Texas Local Government Code. From and after the Effective Date, the City waives its governmental immunity for any issues, disputes, conflicts, suits, actions at law or equity, or actions for declaratory relief, injunctive relief, or mandamus arising from this Agreement to the fullest extent permitted by Chapter 380.

7.5 Other Law. The Parties do not intend the foregoing waivers to be an exclusive list. It is the Parties' intention that the City waive its governmental immunity for any issues, disputes, suits, actions at law or equity, or actions for declaratory relief, injunctive relief, or mandamus arising from or relating to this Agreement to the fullest extent permitted by the Texas Constitution or any other law of the State of Texas.

## SECTION 8. ANNEXATION

8.1 Request to Expand Extraterritorial Jurisdiction. The execution of this Agreement by Luminant constitutes a request and petition under Section 42.022(b) of the Texas Local Government Code for the City to expand its extraterritorial jurisdiction to include all of the Land. The Parties agree that this is a legally sufficient request and petition by Luminant, and that no additional requests or petitions from Luminant are necessary for the City Council to consider and adopt an ordinance expanding the City's extraterritorial jurisdiction.

8.2 Expansion of Extraterritorial Jurisdiction. Promptly upon receipt of a copy of this Agreement executed by Luminant, the City Council shall place on its agenda for consideration an ordinance expanding the City's extraterritorial jurisdiction to include the Land. This Agreement shall not become effective until and unless City Council, by duly enacted ordinance approved after a public hearing complying with all City ordinances and the Texas Open Meetings Act, expands the City's extraterritorial jurisdiction to include all of the Land. The City shall provide Luminant at least three (3) days' written notice of any such public hearing.

8.3 No Annexation Prior to Closing. The Parties acknowledge and agree that this Agreement is not a petition for voluntary annexation nor consent to annexation by Luminant with regard to any portion of the Land. The City shall not annex any portion of the Land prior to Closing, nor shall the City take any step to commence annexation proceedings of any portion of the Land prior to Closing, including, without limitation, scheduling, issuing notice of, or conducting a public hearing concerning the annexation of any portion of the Land. In the event this Agreement terminates prior to Closing, the City shall comply with all requirements set forth in Chapter 43 of the Texas Local Government Code before initiating annexation proceedings regarding the Land, including providing Luminant or its successor due notice of any public hearing concerning annexation, and in that event, Luminant expressly retains and does not waive any rights of a property owner under Chapter 43. The provisions of this Section shall survive the termination of this Agreement if this Agreement is terminated prior to Closing.

8.4 Annexation after Closing. This Agreement shall not preclude the City from annexing all or any portion of the Land after title to the Land is conveyed to the City at Closing. To the extent Luminant's consent would be required to such annexation, this Agreement shall be deemed full and final consent to such annexation, without the necessity of further action by Luminant.

## **SECTION 9. EMINENT DOMAIN**

Nothing herein shall be construed as a consent to eminent domain or as a waiver of any of Luminant's rights in an eminent domain proceeding. In the event that the City initiates eminent domain proceedings with regard to the Land following termination of this Agreement but prior to Closing, the City agrees that this Agreement shall be inadmissible in such proceedings and shall constitute no evidence of the fair market value of the Property.

## **SECTION 10. ASSIGNMENT**

This Agreement may be assigned by Luminant without the consent of the City to any Luminant affiliated or related entity and Luminant will be released from its obligations under this Agreement upon delivery of a notice of such assignment to the City. Any assignment of Luminant's rights and obligations hereunder to an entity that is not affiliated with or related to Luminant will not release Luminant of its respective obligations under this Agreement until the City has approved the assignment in writing; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment.

Any assignment of the City's rights and obligations hereunder will not be effective unless first agreed to in writing by Luminant; provided, however, that the City is prohibited from assigning to any third-party that is involved in pending litigation against or is otherwise adverse to Luminant. Any assignment of the City's rights and obligations hereunder will not be valid unless and until Luminant approves the assignment in writing.

Prior to the future sale, conveyance or transfer of any portion of the Property, the City shall give written notice of this Agreement to the prospective purchaser, grantee or transferee, and shall also give Luminant at least ten (10) days' prior written notice of the sale or conveyance.

Pursuant to Subchapter G, this Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchasers. Any reference to Luminant or City shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

## **SECTION 11. EVENTS OF DEFAULT; REMEDIES**

No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given); provided, however, in the event of any default by a Party hereunder, the failure to promptly cure of which could lead to an imminent risk of personal injury, loss of life, or damage to property, such Party shall take such immediate action as is reasonably necessary to avoid or mitigate such consequences. In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured.

The provisions of this Section 11 shall not apply to Section 4 and shall not operate to lengthen the time for performance of the Conditions Precedent or limit the ability of Luminant to terminate this Agreement on the date stipulated in Section 4 if the Conditions Precedent have not been satisfied on or before said date.

**IF A PARTY IS IN DEFAULT, THE AGGRIEVED PARTY MAY, AT ITS OPTION AND WITHOUT PREJUDICE TO ANY OTHER RIGHT OR REMEDY UNDER THIS AGREEMENT, SEEK ANY RELIEF AVAILABLE AT LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, AN ACTION UNDER THE UNIFORM DECLARATORY JUDGMENTS ACT, SPECIFIC PERFORMANCE, MANDAMUS, AND INJUNCTIVE RELIEF.**

## **SECTION 12. RECORDATION**

This Agreement shall run with the Land, shall be recorded in the real property records of Hopkins County, Texas after the Effective Date, and shall be binding on the City, as the new owner of the Property, and the City's successors in title.

## **SECTION 13. WAIVER OF LANDOWNER CONSULTATION; NO PROTEST**

**13.1 Waiver of Landowner Consultation.** Upon execution of this Agreement, the City agrees to waive any rights to and relieve Luminant and its affiliates (including, without limitation, Luminant Generation Company LLC) of any duty of landowner consultation associated with the release of the reclamation bond for the Property. Concurrently with the Closing, the City will provide Luminant with an executed Waiver of Landowner Consultation, in the form attached hereto as Exhibit "M", waiving the City's rights to landowner consultations associated with the Permits.

**13.2 No Protest.** As a part of the consideration supporting this Agreement, the City agrees and covenants not to contest, protest, or otherwise challenge any application that Luminant or any subsidiary, affiliate or assignee of Luminant or Vistra Energy Corp., formerly known as Energy Future Holdings Corp. and TXU Corp. (collectively referred to as "Applicant"), may file or make to any local, state or federal agency, including but not limited to the RRC, TCEQ, the Corps, and/or the United States Environmental Protection Agency, for any environmental, development, construction, or operation authorization, including, but not limited to any local, state or federal permit, registration or any other authorization for any facility or any portion of a facility, or any other structure or process in Hopkins County, Texas, or otherwise take a position adverse to Applicant, in any proceeding, in any form or forum, including, but not limited to, before or to the RRC, the TCEQ, the Texas State Office of Administrative Hearings, and/or state or federal court. The City's agreement and covenant not to contest, protest, or otherwise challenge any such actions or applications includes the City's express agreement and covenant not to file any public comments, requests for party status, motions to overturn, motions for reconsideration, objections or any other administrative or judicial appeals regarding such application or any authorization that Applicant obtains as a result of such application. The City's agreement and covenant not to contest, protest, or otherwise challenge such application also extends to any subsequent amendment or modification of any authorization that Applicant obtains as a result of any such application. The City further agrees and covenants not to seek or pursue revocation of any

authorization that Applicant obtains as a result of such application, or to attempt to enjoin, cease or restrain operations under such authorization, or take a position adverse to Applicant in any such revocation or injunction action, or in any other way attempt to otherwise constrain operations under such authorization, in any form or forum whatsoever. The provisions of this Section shall survive Closing, and Luminant may enforce the provisions hereof by any appropriate legal action.

#### SECTION 14. TAXES

14.1 Prorations. Taxes, interest, assessments, and rents for the year in which Closing occurs will be prorated through Closing. If taxes for the said year vary from the amount prorated at Closing, the parties shall adjust the prorations when tax statements for said year are available.

14.2 Rollback Taxes. If this Agreement, the underlying transfer of the Property from Luminant to the City, the City's use of the Property after Closing or Luminant's change in use of the Property pursuant to the purpose and provisions of this Agreement result in the assessment of additional taxes, penalties or interest ("Assessments") for periods prior to Closing, the Assessments will be the obligation of the City. If denial of a special use valuation on the Property claimed by Luminant results in Assessments for periods prior to Closing, the Assessments will be the obligation of Luminant. Obligations imposed by this Section 14 will survive Closing. In no event shall Luminant be liable for taxes assessed on the Property unless the taxes are actually paid by the City.

#### SECTION 15. GENERAL PROVISIONS

15.1 Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the City Council; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

15.2 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery, addressed to Luminant or the City, as the case may be, at the addresses provided below:

The City: City of Sulphur Springs  
Attn.: City Manager  
125 South Davis Street  
Sulphur Springs, Texas 75482

Luminant: Luminant Mining Company LLC  
Attn.: Ashlie Alaman Stamper  
6555 Sierra Drive  
Irving, Texas 75039

15.3 Further Assurances; Cooperation. Each Party shall, from time to time, upon written request, execute and deliver such further instruments and documents as may be reasonably necessary to perform its obligations hereunder or to give full effect to this Agreement.

15.4 Severability. The provisions of this Agreement are severable. If a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the unenforceable provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is similar in tenor to the unenforceable provisions as is legally possible, and the Agreement as so-modified shall be enforced to the greatest extent permitted by law, except when such construction would constitute a substantial deviation from the general intent and purpose of the Parties as reflected in this Agreement.

15.5 No Third-Party Beneficiary. This Agreement is not intended, nor will it be construed to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

15.6 Litigation. In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Luminant and the City intend to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The filing of any third-party lawsuit relating to this Agreement will not delay, stop or otherwise affect this Agreement, unless otherwise required by a court of competent jurisdiction.

15.7 Interpretation. The Parties acknowledge that each of them has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for or against any Party, regardless of which Party originally drafted the provision.

15.8 Authority and Enforceability. The City represents and warrants that this Agreement has been approved by ordinance or resolution duly adopted by the City Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. Luminant represents and warrants that this Agreement has been approved by appropriate action of Luminant, and that the individual executing this Agreement on behalf of Luminant has been duly authorized to do so. Each Party acknowledges and agrees that this Agreement is binding upon such Party and enforceable against such Party in accordance with its terms and conditions.

The City's execution of this Agreement constitutes a valid and binding obligation of the City under State Law. Luminant's execution of this Agreement constitutes a valid and binding obligation of Luminant.

15.9 Enforcement; No Waiver. This Agreement may be enforced by Luminant or the City by any proceeding at law or in equity. The remedies herein provided shall not be deemed to be exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing in law, in equity or in bankruptcy. No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement. The failure of either Party to insist at any time upon the strict performance or any covenant or agreement in this Agreement or to exercise any right,



power or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future.

15.10 Law; Venue. This Agreement is governed by and construed in accordance with the laws of the State of Texas. The venue for any legal proceeding to enforce or interpret the provisions of this Agreement shall be in Dallas County, Texas, on agreement of the Parties and pursuant to Section 15.020 of the Civil Practice and Remedies Code.

15.11 Execution. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and the same instrument.

15.12 Construction. This Agreement shall be construed fairly and simply, and not strictly for or against either Party. Headings used throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, restrict, modify, amplify or aid in the interpretation or construction of the meaning of the provisions of this Agreement.

15.13 No Partnership or Joint Venture. Nothing in this Agreement or any related document should be construed to create any form of partnership or joint venture among the Parties.

15.14 Multiple Originals. The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

15.15 Amendment. This Agreement may only be amended as mutually agreed in a writing duly executed by the Parties.

15.16 Time is of the Essence. It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

15.17 Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

15.18 No Merger. The obligations set forth herein shall survive Closing, and shall not be merged with the deed. The Parties acknowledge that the interest in the Exclusive Easement by Luminant, together with the covenants and restrictions imposed by this Agreement, vest Luminant with standing to enforce this Agreement under Section 212.172 the Texas Local Government Code after transfer of ownership of the Land to the City.

*[Remainder of the page intentionally left blank.]*

City of Sulphur Springs



Marc Maxwell, City Manager

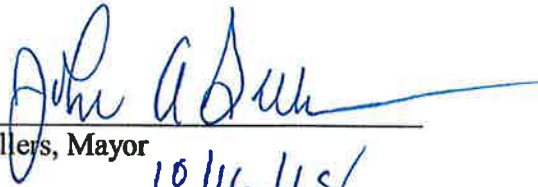
Date: 10-16-18

Luminant Mining Company LLC  
Luminant Generation Company LLC



Matthew Goering, VP

Date: 10-16-18



John Sellers, Mayor

Date: 10/16/18

Approved as to form:



Jim McLeroy, City Attorney

Date: 10-16-18



**Matt Goering**  
Vice President - Operations Planning  
matthew.goering@luminant.com

**Luminant**  
1601 Bryan Street  
Dallas, TX 75201

T 214 875 9977

March 29, 2017

The City of Sulphur Springs  
Attention: Mark Maxwell, City Manager  
125 South Davis Street  
Sulphur Springs, Texas 75482

Re: Letter of intent for the development and conveyance of approximately 4,900 acres, formerly the Thermo Mine, located in or near Sulphur Springs, Texas (herein referred to as the "Property")

Dear Mr. Maxwell:

**WHEREAS**, Luminant Mining Company LLC ("Luminant") is the owner of 4,900 acres more or less of land in Hopkins County, Texas, said Property having been permitted for mining operations by Luminant and now being subject to the reclamation requirements of the Railroad Commission of Texas ("RRC"), which requirements are secured by a bond, posted by Luminant, until completion (the "Bond");

**WHEREAS**, the Property is also subject to the rules and regulations of various other regulatory agencies, including but not limited to, the Texas Commission on Environmental Quality ("TCEQ") and the United States Army Corps of Engineers ("USACOE");

**WHEREAS**, the RRC supports reclamation activities and changes of land use that result in beneficial land use by the general public and, specifically, the local community;

**WHEREAS**, the City of Sulphur Springs (the "City") is the county seat of Hopkins County (the "County"), and desires to flexibly develop, use and maintain the Property as a multi-use site for its residents;

**WHEREAS**, Luminant desires to work with the City to prepare the Property to be developed by the City into a multi-use site, subject to the rules and requirements, if any, and the ultimate final approval of the RRC; and

**WHEREAS**, Luminant and the City held meetings on February 10, 2017 and March 24, 2017 to discuss the general terms of the agreement.

**NOW, THEREFORE**, Luminant and the City enter into this non-binding letter of intent ("LOI") setting forth some of the basic agreements and terms pursuant to which Luminant proposes to prepare and convey to the City the above referenced Property.

1. **Property:** The Property consists of approximately 4,900 acres +/- of unincorporated land in Hopkins County, as more particularly depicted on the attached map. The Property is subject to the reclamation requirements of the RRC, the completion of which are

secured by the Bond. The City desires to own and develop the Property into a multi-use site, including but not limited to recreational and commercial uses. The Property is comprised of:

- a. **H-Area.** Luminant intends to complete reclamation on that portion of the Property known as the former H-Area, roughly 350 acres more or less ("H-Area"), by developing it into a recreational area, subject to the RCT's approval of such land use change and designation, which will include a pond, forested, open pasture and wetland areas. The pond to be created will have a capacity of 475 acre feet ("H-Area Pond"). Pursuant to Section 11.142 of the Texas Water Code, reservoirs with a capacity of more than 200 acre feet require a permit (water right) to impound such amount of water.
- b. **Facilities.** The City desires to keep and for Luminant to leave in their current condition the facilities constructed or placed by Luminant onto the Property, to include but not be limited to haulroads, rail lines, silos, office and maintenance buildings, tank farms (bulk storage tanks), culverts, access roads, overpasses and drop structures (the "Facilities").
- c. **County Roads, Bridges, Overpasses, Etc.** The Property is subject to certain requirements from the County and the Texas Department of Transportation ("TXDOT") related to the construction of certain county roads and the removal of the FM 1870 bridge, respectively (collectively, the "Roadway Obligations"). The City desires to keep and maintain the FM 1870 bridge.
- d. **Wetlands.** Based on requirements of the USACOE, Luminant is required to protect and maintain certain wetland areas on the Property.
- e. **Remaining Property.** The design for and end-use of the remaining Property not described above in 2(a-d) will be created in consultation with the City.

Once this agreement has been presented to and approved by the RRC, Luminant will deliver to the City the design for the H-Area (the "H-Area Initial Design"), and a map depicting the Facilities and the Roadway Obligations, all of which will be submitted to the RRC for final approval.

2. **Conveyance:** In consideration of the promises made by the City and the ability, with the City's complete cooperation and consent, of Luminant to deduct the full fair market value of the Property, Luminant will gift the Property to the City, either in whole or in pieces. Such conveyance(s) will be made upon the mutual agreement of the City and Luminant, and based on permit and the Bond requirements in effect at the time. Notwithstanding such restrictions, the City and Luminant will endeavor to the transfer of the Property to the City as expeditiously as possible.

For clarity, at no time will the Property be open to the public while ownership is vested with Luminant.

3. **Responsibilities of the Parties:** Per the rules and regulations of the RRC, Luminant is currently responsible for the reclamation of the Property, which will remain under Luminant's Bond and the responsibility of Luminant until the RRC releases or transfers the Bond.

- a. **Luminant's Responsibilities:** Until the Property is transferred to the City and as long as the Property is under Luminant's Bond, Luminant shall have full authority to make any regulatory decisions related to the Property, including those related to its development.

Luminant will reclaim the H-Area property by undertaking development of the layout and natural elements of the H-Area Initial Design at its sole cost and in accordance with the RRC's reclamation requirements. Luminant will allow the City to review the H-Area Initial Design and any subsequent changes to the H-Area Initial Design, and will endeavor to accommodate all of the City's desires and future uses of the H-Area in finalizing the H-Area Initial Design and in the developing of the H-Area property; provided, however, that at all times Luminant will have sole authority over the H-Area development.

For clarity, Luminant shall not be responsible for the costs or expenses associated with, nor required to provide any financial support to the City for, any structural Improvements or features to be added to the Property, including any depicted for illustrative purposes in the H-Area Initial Design, or that the City otherwise wishes or decides to install on the Property, which might include, but not be limited to, any walking trails, bike trails, picnic areas or furniture, playgrounds and associated equipment, pavilions, and parking areas (collectively, "Improvements"). Such Improvements, will be the sole responsibility and cost of the City or its developer.

- b. **The City's Responsibilities:** The City agrees to assist Luminant in all respects in getting approval from the RRC to undertake this development, and in completing the development.

The City acknowledges and agrees to assume from Luminant the Roadway Obligations. With Luminant's consent and cooperation, the City will be responsible for reaching agreements with Hopkins County and TXDOT to ensure that such obligations are transferred to the City. The City shall also be responsible for an agreement with TXDOT to keep the FM 1870 bridge.

The City acknowledges that the capacity of the H-Area Pond will be 475 acre feet and that of the G-13 pond is 2,400 acre feet. Pursuant to the requirements of Section 11.142 of the Texas Water Code, the City shall, upon consultation with TCEQ, either transfer its existing or seek new water rights to accommodate the capacity of the H-Area Pond and the G-13 Pond.

The City shall, with the cooperation and consent of Luminant, annex the Property into the City of Sulphur Springs; provided, however, that prior to

such annexation the City and Luminant have agreed in a binding document that annexation of the Property into the City of Sulphur Springs will not subject Luminant to any new or additional property or ad valorem taxes not currently assessed.

For clarity, the City shall not be required to provide any financial support to Luminant for the development of the natural elements of the H-Area which are regulated by the RRC, and will not have any authority or ability to direct the development or change those aspects of the H-Area which are regulated by the RRC.

- c. **Collective Responsibilities.** The City and Luminant will work together to transfer the obligations of the RRC, including the permit requirements, from Luminant to the City.
4. **Timing:** The process of obtaining approval from the RRC of the H-Area Initial Design and other aspects of the development of the remaining Property is anticipated to take up to one (1) year. Subsequent to such approval, reclamation can commence. Based on RRC requirements and the overall size of the H-Area property, Luminant anticipates the final disposition of the regulatory mine permit and the Bond affecting said the H-Area should occur within five (5) to seven (7) years. Final disposition of the permit and Bond for other portions of the Property may take more or less time.
5. **No Contract:** This LOI is non-binding. No contract or agreement of purchase or sale shall be deemed to exist between Luminant and the City unless and until a contract has been mutually executed between the parties in form and substance satisfactory to both parties' legal counsel.

If the proposals set forth above are acceptable to the City, Luminant would appreciate your acknowledgement and signature on the following page of this LOI indicating that the City is in agreement with these terms. Upon execution of this LOI, Luminant will commence developing the final Design Package to be submitted to the RRC.

Best regards,

Luminant Mining Company LLC

By: 

Matthew A. Goering  
Vice President

I Emily Glass, Mayor of the City of Sulphur Springs, being duly vested with the proper and necessary authority, hereby acknowledge that I have read this letter of intent and that it correctly states the proposed terms of the development and conveyance of the Property.

Signed this 29 day of <sup>March</sup>~~April~~, 2017. <sup>EG</sup>

The City of Sulphur Springs

By: Emily Glass

Its: Mayor

**VERIFICATION OF APPLICATION**


I, Scott Mills, Environmental Manager - Permitting, state that I have knowledge of the facts herein set forth, including those contained within the document titled Thermo Mine, Permit No. 5G, Revision Application No. 34, Supplemental Document No. 1, dated May 6, 2019, and that same are true and correct to the best of my information and belief.

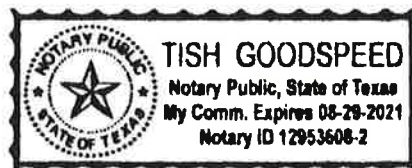
Dated this 6<sup>th</sup> day of May, 2019.

  
\_\_\_\_\_  
Scott Mills

Before me, a Notary Public, on this day personally appeared Scott Mills, known to me to be the person whose name is subscribed to the foregoing instrument.

Given under my hand and seal of office this 6<sup>th</sup> day of May, 2019.

  
\_\_\_\_\_  
Tish Goodspeed  
Notary Public, State of Texas  
Expires 08/29/2021





**Monticello-Thermo Mine, Permit No. 5G**  
**Revision No. 34**  
**Proposed H-Area Reclamation Plan**  
**Concerns Rendering the Application Incomplete or Deficient**  
**September 21, 2018 (originally noted on January 19, 2018)**

**Page 1**

**Prologue**

Staff notes that the information in the list below does not necessarily constitute an all-inclusive list of information that appears to be missing from or deficient in this application, because the lists stem from a preliminary, rather than an exhaustive, review. In List B, Staff describes concerns suggesting that the application is deficient, to assist Luminant in its preparation of a supplement.

Staff values Luminant's input to authenticate these lists and therefore requests that Luminant set up a meeting to address and verify which items are necessary for completeness.

**List A. Excluded or Obsolete Items that Appear to Render the Application Incomplete**

- A-1. Luminant did not revise several tables in the approved permit to account for the activities/changes described in this revision application (e.g., Table 119-1, *Mined and Affected Areas for the Life of Mine*, Table 125(a)-1, *Mine Block Acreage or the Life of Mine*, Table 139(a)-2, *Temporary Cessation of Operations, Backfilling and Grading Variances and Stream Buffer Zone Variances*, etc.).

**Luminant Response:**

The above noted tables were not included in the original submittal of this revision application as the contents of the proposed reclamation do not directly impact these components of the permit and no changes are proposed to these tables by this application. The proposed changes to the permit do not constitute a significant departure from the approved method of mining or reclamation which would significantly change the effect the mining operation would have on persons impacted by Luminant's operations or on the environment. The final pit reclamation plan format proposed in this application is consistent with the standard format shown in multiple approved reclamation plans for mine operations controlled by Luminant.

- A-2. Luminant did not revise several plates/maps in the approved permit to account for the activities/changes described in this revision application.

**Luminant Response:**

No changes are proposed to these plates/maps by this application. The reclamation plan format proposed in this application is consistent with the standard format shown in multiple approved reclamation plans for mine operations controlled by Luminant. Luminant is confident that every plate/map in the approved permit has been addressed to account for the changes described in this revision application. The proposed changes to the permit do not constitute a significant departure from the approved method of mining or reclamation which would significantly change the effect the mining operation would have on persons impacted by Luminant's operations or on the environment.

- A-3. The proposed postmine land use (PMLU) does not include information required at §12.399(a)(1) and (a)(2).

**Monticello-Thermo Mine, Permit No. 5G**  
**Revision No. 34**  
**Proposed H-Area Reclamation Plan**  
**Concerns Rendering the Application Incomplete or Deficient**  
**September 21, 2018 (originally noted on January 19, 2018)**

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**Luminant Response:**

Luminant only proposes to change postmine land use as it relates to the update of the H-03 pond location and shape, removal of three other ponds (Water Resources to Pastureland use) which were not developed in reclamation and changing the land use for certain facilities and haul roads from Pastureland and Fish & Wildlife Habitat to Industrial/Commercial consistent with pending Revision Application No. 35. The proposed postmine land uses are a higher and better use in support of the long-range intended use by the prospective owner, the City of Sulphur Springs for these facilities. These land uses are compatible with local land use policies and plans as reflected by the accompanying executed Letter of Intent and Development Agreement and are key features of interest for the City of Sulphur Springs, serving a "public purpose, in the best interests and welfare of the public, and provide future benefit to the economy of the City". The proposed changes to the permit do not constitute a significant departure from the approved method of mining or reclamation which would significantly change the effect the mining operation would have on persons impacted by Luminant's operations or on the environment.

- A-4. Luminant did not provide a plan and schedule for revegetation as required at §12.390 through §12.393, and §12.395.

**Luminant Response:**

Luminant has revised the proposed reclamation plan to note that the proposed reclamation plan will undergo the same revegetation plan as used for all other disturbed areas within the permit boundary. A copy of the revised text has been included in this supplemental document. The proposed changes to the permit do not constitute a significant departure from the approved method of mining or reclamation which would significantly change the effect the mining operation would have on persons impacted by Luminant's operations or on the environment.

- A-5. Luminant did not revise several permit components considering the activities/changes described in this revision application (e.g., fish and wildlife protection plan (section .144), surface-water control plan (section .148), stream-channel diversion descriptions (section .150), transportation-plan information (section .154), etc. Luminant proposes only changes to information in three application sections: .123, .139, and .147.

**Luminant Response:**

Luminant has reviewed Staff's concerns with no changes being provided for the above noted sections in support of the pending reclamation. Luminant has confirmed that the proposed reclamation plan does not include content that impacts the contents of Section .144, .148 or .154. No changes are proposed to these sections by this application. The reclamation plan as provided is consistent with the standard format of numerous approved reclamation plans for mine operations controlled by Luminant. The proposed changes to the permit do not constitute a significant departure from the approved method of mining or reclamation which would significantly change the effect the mining operation would have on persons impacted by Luminant's operations or on the environment.

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- B-1. Luminant does not indicate why it proposes to leave an approximately 120-ft high temporary unsuitable-material stockpile (northwest of proposed H-03 Permanent Impoundment) as a permanent structure in Zone 1.

**Luminant Response:**

The proposed postmine contours are based on a concept desired by the end user of the property (City of Sulphur Springs) to facilitate development by the City into a multi-use site as reflected by the letter of intent of March 29, 2017 and the Development Agreement executed October 16, 2018 by the City and Luminant. This information was presented in a meeting between Luminant, members of the SMRD Director, Assistant Director, Technical Staff, and leadership from the City of Sulfur Springs on May 16, 2017. During that meeting, the City Manager expressed the importance of retaining the hill (reclaimed stockpile adjoining the H-03 Impoundment) to the City's multi-use purpose. Accordingly, Luminant's proposed plan for reclamation of the "stockpile" to the slopes, footprint, height and configuration are in keeping with City's plans after extensive consultation and in light of City's desires for even steeper slopes than is currently proposed. Revision Application No. 34 is consistent with the information presented during that meeting. In addition, Luminant is in disagreement with Staff's interpretation of the plan proposing to leave a 120-ft high temporary unsuitable-material stockpile. The pending reclamation plan proposes to grade the aforementioned stockpile to 7:1 slopes, according to the above noted design concept, and place at least 4 feet of suitable material (from nearby suitable material stockpiles) over the subgrade in accordance with the Regulations.

- B-2. Revised operation plan sheets (Plates with a "139-1-" prefix) are required to reflect changes to the operation plan in the H Area resulting from this proposed H-Area reclamation plan.

**Luminant Response:**

Luminant has revised Plates 139-1-1 and 6 to update the delineation of the suitable material storage areas in the H-Area. Luminant has confirmed that the other contents of the proposed reclamation plan do not impact the aforementioned plates. While the new Figure E-1 does include the delineation of the proposed reclamation zones, the proposed location of related permanent structures and the postmine contour plan, these items are not components of the plates with the "139-1-" prefix.

- B-3. The proposed reclamation plan does not meet/include information required as per §12.384(b)(1), §12.384(b)(2), §12.145(b)(3), §12.363, etc.

**Luminant Response:**

By this application, Luminant proposes postmine slopes consistent with the surrounding premine topography. Although not a factor in determination of approximate original contour, which is based on slopes rather than height, the elevation change associated with the proposed reclaimed stockpile adjoining proposed H-03 Impoundment constitutes a unique feature on that landscape that is desired by the end user of the property (City of

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Sulphur Springs) to facilitate development by the City into a multi-use site as reflected by the letter of intent of March 29, 2017 and the Development Agreement executed October 16, 2018 by the City and Luminant. This information was presented in a meeting between Luminant, members of the SMRD Director, Assistant Director, Technical Staff, and leadership from the City of Sulfur Springs on May 16, 2017. During that meeting, the City Manager expressed the importance of retaining the hill (reclaimed stockpile adjoining the H-03 Impoundment) to the City's multi-use purpose. Accordingly, Luminant's proposed plan for reclamation of the "stockpile" to the slopes, footprint, height and configuration are in keeping with City's desires after extensive consultation and in light of City's desires for steeper slopes than currently proposed. Proposed postmine slopes vary and do not exceed that necessary to safely ensure stability and minimize erosion. Highwalls will be eliminated. No change is proposed to the permit that would increase pollution; rather the reclamation plan will minimize risk of pollution. All spoil within the subject postmine area will be utilized to achieve the proposed postmine contour and no excess spoil requires disposal.

- B-4. Mining has ceased; therefore, the statement in the last paragraph of page 139-E-2 under the *H-03 Pond* description should be corrected.

**Luminant Response:**

Luminant has revised page 139-E-2. A copy of this information is included in this supplemental document.

- B-5. The last paragraph of page 139-E-2 under the description of the *Zone 3 Suitable Material Leveling* should refer to Zone 3 instead of Zone 2. Additionally, please note that there are significant changes to Table 139(b)-1 (*Slope Comparison Table*) compared to the approved table.

**Luminant Response:**

Luminant has revised page 139-E-2. A copy of this information is included in this supplemental document.

In addition, Luminant re-evaluated the proposed postmine slope information versus the approved permit. Based on our assessment, the proposed revision application includes a maximum slope increase of 0.8% and a maximum increase of 1.6%. Luminant does not consider these slope changes to be significant for the 4,506 acre permit area.

- B-6. §12.139 Luminant provides general design information for the proposed H-03 Permanent Impoundment in Table 139(b)-3, *Permanent Impoundment Schedule*. Additionally, in the legend on Plate 147-1, *Postmine Land Use Map*, Luminant identifies the H-01 Treatment Pond and H-01 Sedimentation Pond as proposed developed water resource structures. In the SMRD's records, these two structures (H-01 Treatment Pond and H-01 Sedimentation Pond) are approved temporary structures. Please explain and/or provide detailed design plans/calculations as necessary.

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Luminant Response:

The proposed revision application includes an update to Table 139(b)-3 which proposes the submittal of detailed plans for the H-01 Pond and the H-01 Treatment Pond as permanent structures in 2023. Since the permanent design of these structures is not directly related to the proposed final pit reclamation plan, no detailed design plans were provided in this application.

Luminant included H-01 Pond and H-01 Treatment pond on plate 147-1 and Table 139(b)-3 as they are now proposed to be submitted as permanent in 2023.

- B-7.      §12.139 According to revised Table 139(b)-3, detailed design plans for H-01 Treatment Pond and H-01 Permanent Impoundment will be submitted in 2020, and detailed design plans for H-03 Permanent Impoundment will be submitted in 2019. Luminant indicates that activities associated with the H-Area reclamation plan will be complete by March 1, 2019. No information is provided in the revised portions of section .139 to describe the impacts of the proposed reclamation strategy on timing of submittal of detailed design plans for H-01 Permanent Impoundment H-01 Treatment Pond. As part of the proposed H-Area reclamation plan, the date of submittal of design plans has not been provided. Staff needs this information to determine how this plan element coincides with the rest of the reclamation schedule.

Luminant Response:

As mentioned in the previous comment response, the permanent design of the H-01 Pond and H-01 Treatment Pond are not directly related to the proposed final pit reclamation plan. These features are approximately 2,000 feet north of the proposed reclamation plans area. Therefore, no detailed design plans were provided in this application.

- B-8.      §12.139 Revised Table 139(a)-2 (*Temporary Cessation of Operations, Backfilling and Grading Variances and Stream Buffer Zone*), Table 139(a)-3 (*Progressive Characteristics for Backfilling and Grading (B&G) Time Frame and Distance Variances*) that includes a reference to Appendix 139-E for the proposed H-Area Reclamation Plan, and Table 139(b)-1 (*Primary Sedimentation Control Structures and Impoundment Schedule*) that includes revised pond information, are required.

Luminant Response:

Luminant has updated Table 139(a)-3 to remove all backfilling and grading information for the H-Area and include a reference to Section .139 Appendix E. The contents of the proposed reclamation plan does not affect the status of the temporary of cessation of operations, backfilling and grading variances or stream channel buffer zones variances of the Thermo Mine. Therefore, Table 139(a)-2 was not included in the original submittal of this revision application. However, Luminant has revised the aforementioned table to remove references to temporary cessation of operations in the F-Area. Table 139(b)-1 was not provided in the original submittal of this revision as the contents of this application have



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no impact on the primary sediment control structures and impoundment schedule. However, Luminant has revised the aforementioned table to add the approval date of the H-01 Sedimentation Pond and H-01 Treatment Pond. Revised copies of Table 139(a)-2, Table 139(a)-3 and Table 139(b)-1 have been included in this supplemental document.

- B-9. §12.139 Luminant indicates on *Table 139 E-2* that there are 379,300 yd<sup>3</sup> of “*Recoverable Suitable Material*” in suitable material H-Area Stockpile No. 1. In the text on page 139-E-1, Luminant indicates that this same stockpile has a maximum storage capacity of 318,000 yd<sup>3</sup>. Additionally, on page 139(b)-4 of the approved permit (Supplemental Document No. 4), Luminant indicates that “...it is estimated that approximately 318,000 loose cubic yards of suitable material will be placed in the suitable material stockpile.” An explanation is needed for the origin of the additional 61,300 yd<sup>3</sup> of suitable material and why this material was placed in a stockpile not designed nor bonded for this material quantity.

**Luminant Response:**

The intent of Table 139 E-2 is to demonstrate adequate suitable material is in place to support the reclamation of the area in question. The noted recoverable suitable material for Stockpile No. 1 represents the contents of the stockpile (316,200 cy) as well as the existing 4.3 feet of suitable material below the stockpile (66,031 cy). The intent of this format was to emphasize that adequate material will be in place after the contents of the stockpile have been used for the proposed reclamation plan.

- B-10. §12.139 Luminant indicates in *Table 139 E-2* that there are 178,204 yd<sup>3</sup> of “*Recoverable Suitable Material*” in suitable-material H-Area Stockpile No. 2; however, text on page 139-E-1 indicates that suitable-material H-Area Stockpile No. 2 has a maximum storage capacity of 430,000 yd<sup>3</sup>. An explanation is needed describing where the suitable material expected to be stored in this stockpile was placed.

**Luminant Response:**

The reference to the maximum storage capacity of H-Area Stockpile No. 2 represents the maximum volume of material that can be placed in the delineated area. Therefore, the maximum storage capacity noted in the proposed application was never intended to be considered a minimum storage requirement. As noted in Table 139-E-2, the stockpile currently contains 178,204 yd<sup>3</sup>. While it is common for an existing storage to be less than a maximum storage capacity, the current differential in the volume of the stockpile and the approved maximum capacity is likely related to the fact that mining in this area was ceased approximately 975 feet of the approved 5-year term mining area.

- B-11. §12.139 Review of Tables 139 E-1 and 139 E-2 indicates that, for Zone 2 and for Zone 3, adding the “*Required Suitable Material*” (Table 139 E-2) to the suitable material to be moved (Table 139 E-1) equals the “*Recoverable Suitable Material*” in Table 139 E-2. Staff believes this should also be the case for Stockpile Nos. 1 and 2. In addition, Staff notes that the total cubic yards listed in Table 139 E-2 appear to be incorrect.

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**Luminant Response:**

Staff is correct in the adding the "Required Suitable Material" for Zones 2 and 3 (Table 139 E-2) to the suitable material to be moved (Table 139 E-1) equals the "Recoverable Suitable Material" in Table 139 E-2. However, this approach is not appropriate for Stockpile Nos. 1 and 2 as both stockpiles are partially located in the delineation of Zone 1. Therefore, the same math for these stockpiles excludes the locations within Zone 1 as those volumes are accounted for in the Zone 1 calculation.

Luminant has revised Table 139 E-2 to reflect the correct total for "Required Suitable Material". A copy of the revised table has been included in this supplemental document.

- B-12.      §12.139 Luminant classifies the material that will remain in Zone 2 and in Zone 3 as "Suitable Material" in an affected area that was not mined during progression of the active pit. Luminant provided no details regarding the potential ripping and disking of Zone 2 and Zone 3 following suitable material removal, nor what it plans to do with the excess stockpile material. Staff considers that Luminant's proposed ripping and disking plan must be no less intensive than that approved for the Oak Hill Mine, Permit No. 46C, Revision No. 40.

**Luminant Response:**

In accordance with 12.384 of the Regulations, all spoil will be transported, backfilled and compacted as needed to ensure stability. The proposed suitable top four feet resulting from highwall and spoil reduction and Zone 2 is unlikely to result in (excessive) compaction characteristics that would be a limiting factor of post mine productivity. While it is premature to judge the sufficiency of compaction prior to the reclamation effort and, while it is not anticipated, treatment of excessive compaction as a normal agricultural husbandry practice will ensue as needed including the use of dozers equipped with rippers in combination with disking equipment will be used to loosen the remaining material in the suitable layer if this situation is encountered. The aforementioned equipment will cultivate the suitable layer to ensure a minimum of the top four feet is in the appropriate condition for the revegetation phase of the approved reclamation requirements. After reclamation of Zones 2 & 3 and Stockpile Nos. 1-4 is complete, the areas will be reclaimed following the same reclamation plan, soil testing plan, and revegetation plan as used for all other disturbed areas within the permit boundary. Luminant has revised page 139-E-2 to include this same information regarding ripping and disking. A copy of this information is included in this supplemental document.

- B-13.      §12.139 Information needs to be provided to clarify how Luminant determined the amount of recoverable suitable material in each zone and in each stockpile as listed in Table 139 E-2, including the depth of removal.

**Luminant Response:**

The amount of recoverable suitable material for each zone and stockpile is determined in the following manner:

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- Zone 1: 10,400 cubic yards from the overlap of Stockpile No. 1, 8,300 cubic yards from the overlap of Stockpile No. 2 and 18,200 yards from the construction location of the H-03 Pond spillway to be stored in Stockpile Nos. 3 & 4 prior to subgrade development.
- Zone 2: The noted 66,031 cubic yards represents the insitu material available within the approved suitable layer of the zone to support the placement of 4 feet of suitable material in Zone 1 while leaving at least 4 feet of suitable material in the material source location (approximately 29,831 cubic yards). The calculation shown on Table 139 E-2 does not represent the maximum volume of suitable material present in Zone 2.
- Zone 3: The noted 118,855 cubic yards represents the insitu material available within the approved suitable layer of the zone to support the placement of 4 feet of suitable material in Zone 1 while leaving at least 4 feet of suitable material in the material source location (approximately 49,255 cubic yards). The calculation shown on Table 139 E-2 does not represent the maximum volume of suitable material present in Zone 3.
- H-Area Stockpile No. 1: The noted 379,330 cubic yards represents the material to be used to support the placement of 4 feet of suitable material in Zone 1 plus 4.3 feet of suitable material that has been placed to reclamation the area below the stockpile (approximately 63,130 cubic yards). This value excludes the material within the overlap of Stockpile No. 1 and Zone 1.
- H-Area Stockpile No. 2: The noted 178,204 cubic yards represents the material to be used to support the placement of 4 feet of suitable material in Zone 1 plus 4.3 feet of suitable material that has been placed to reclamation the area below the stockpile (approximately 99,204 cubic yards). This value excludes the material within the overlap of Stockpile No. 2 and Zone 1.

- B-14. §12.139 Luminant indicates in Appendix E that mobile equipment will move approximately 750,000 cubic yards of subgrade material from Zone 1; however, it is not clear where the material will be placed. Additionally, an explanation has not been provided to justify the proposed start date of the activities proposed in the reclamation plan.

**Luminant Response:**

Luminant indicates on page 139-E-1 and Table 139 E-1 that the 750,000 cubic yards of subgrade material will remain in Zone 1.

The proposed start date for the pending reclamation plan has been selected in consideration of the time required to complete SMRD review/approval of this application as well as further follow-up with the City of Sulphur Springs regarding the approved plan, the execution of the project bidding process and the mobilization of the contractor to execute the reclamation schedule. Activities will begin earlier if possible under these circumstances.



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- B-15.      §12.139 Luminant did not provide physicochemical data for all materials considered for placement in the postmine top four feet. Additionally, no geologic cross sections were provided for Zones 2 and 3. Staff considers that a cross section extending through all locations, to include the stockpiles, are appropriate.

**Luminant Response:**

The physicochemical data for the materials proposed in the application for placement in the postmine top four feet is in the currently approved 5G Permit. The existing Stockpile No. 1 is an approved suitable material storage area and its contents, as well as the material proposed for recovery from Zones 2 and 3, are comprised of material from the approved suitable layers in the H-Area.

- B-16.      §12.139 Luminant is apparently proposing to cover the approximately 120-foot high temporary stockpile, which contains acid/toxic-forming materials from which acidic drainage is flowing to the nearby pit, with approximately four (4) feet of suitable material. Staff considers that this proposal is counter to requirements at §12.386(4) that acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution. During a recent site visit, the Director viewed the area of the stockpile and no discernable acidic drainage seeps were identified. Luminant is requested to provide a copy of the report from its consultant demonstrating the lack of acidic drainage from the stockpile in the next supplement as part of its response to this comment.

**Luminant Response:**

Luminant disagrees with Staff's unsubstantiated characterization that "acid drainage is flowing (from the "stockpile") to the nearby pit and we are unaware of any factual basis for this assertion. Luminant has updated section .146 Appendix D to include the requested report in the permit. A copy of this information is included in this supplemental document. This report was provided to Staff on 5/17/2018 via email. The contents of this report summarizes there is no seep from the stockpile and groundwater entering the final pit along the pit slopes is of good quality. The existing final pit conditions are very similar to many final pit ponds prior to backfilling to cover the exposed coal seams and carbonaceous material. With the execution of the reclamation, the H-03 Pond should see normal water quality.

- B-17.      §12.139 Review of available aerial photographs indicates the presence of rills and gullies on the approximately 120-foot high stockpile. On Plates 139-2-1, 139-3-1, and 147-1, Luminant depicts the existing stockpiles but does not provide a clear depiction of the proposed postmine contours. Luminant has not demonstrated that rills and gullies will not disrupt the postmine land use or the reestablishment of the vegetative cover or cause or contribute to a violation of water-quality standards for receiving streams as required at §12.389(b).

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**Luminant Response:**

Staff notes the proposed height of the reclaimed stockpile to be 120 feet. Luminant notes that the difference between the base contour of 490 feet and the crest of 600 feet is 110 feet and further suggests attention to the nearby natural ground contours of 505 feet and 510 feet immediately south of the H-03 Impoundment. Execution of the reclamation plan will involve backfill and grading as well as placement of four feet of suitable material on the area of concern. Current rills and gullies associated with the stockpile will be eliminated in the regrading process, as has been discussed with Staff in previous meetings. Luminant reiterates that the information on Plates 139-2-1 and 147-1 depicts the proposed postmine contour configuration for the pending reclamation plan. The presence of rills and gullies according to available aerial photography is irrelevant in this case as it only provides a snapshot of conditions prior to the execution of the proposed reclamation plan. Postmine revegetation and land management practices will serve to minimize erosion after final topography is achieved.

- B-18. §12.145 It is unclear whether a revised reclamation cost estimate is required considering the activities/changes described in this revision application.

**Luminant Response:**

The currently approved reclamation cost estimate includes a worst-case pit calculation, a worst-case B&G calculation and calculations for the complete reclamation of the max storage capacities of all suitable and unsuitable material stockpiles in the H-Area. Since the proposed reclamation plan involves the hauling and leveling of less material than what is considered in the approved reclamation cost estimate, no changes to the reclamation cost estimate is proposed at this time.

- B-19. §12.150 Luminant does not appear to have provided information concerning the final disposition of three diversions constructed in the area. One diversion (H-01 Diversion) routes water around the northeastern edge of H-Area into H-01 Permanent Impoundment. The other two diversions (H-02 Diversion and H-03 Diversion) route water around the southwestern edge of H Area into H-01 Permanent Impoundment.

**Luminant Response:**

Since the above noted diversions are outside the subject reclamation area, no information on these structures has been provided with this application. These diversions are associated with the surface water control system of the H-01 Sedimentation Pond. As noted in the pending application, the H-01 Pond is scheduled for submittal as a permanent impoundment in 2023. Therefore, the above noted diversions will be submitted according to the same schedule.

**TABLE 139(a)-2**

**TEMPORARY CESSATION OF OPERATIONS,  
BACKFILLING AND GRADING VARIANCES AND  
STREAM BUFFER ZONE VARIANCES**

Action	Affected Area (Ac)	RCT Submittal Date	RCT Approval Date	Ending Date
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**TEMPORARY CESSATION OF OPERATIONS**


**BACKFILLING AND GRADING VARIANCES**

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**STREAM CHANNEL BUFFER ZONE VARIANCES**

B-17 Drainageway	N/A	5F Ren Exp SD2	12/14/10	EOPT
Sub-basin 5 Waterway	N/A	5F Ren Exp SD2	12/14/10	EOPT
Sub-basin 7 Waterway	N/A	5F Ren Exp SD2	12/14/10	EOPT
Kennedy Creek	N/A	5F Renewal	12/14/10	EOPT
Rock Creek	N/A	5F Renewal	12/14/10	EOPT

**Note:**

1) The RCT approved a variance to Rule 12.382(2) on 02/01/99 which allows Luminant Mining to field mark pipelines within the active mine blocks and in the vicinity of other surface-mining activities at varying intervals and at public road crossings. Markers will be set such that they will be visible from one marker to the next. Luminant Mining proposes an extension of the variance to the end of permit term of this renewal/expansion application.

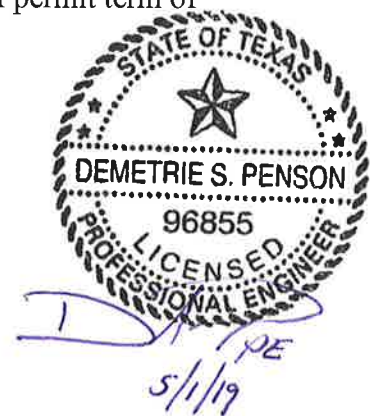


TABLE 139(a)-3

## PERMIT NO. 5G

PROGRESSION CHARACTERISTICS FOR BACKFILLING AND GRADING (B & G) TIME FRAME  
AND DISTANCE VARIANCE

Mine Area	Annual Pit Advancement (normal)	Active Pit Area*	Pit to Spoiling and Leveling Area*	Spoiling and Leveling Area *	Proposed B & G Distance for Area G	Proposed B & G Time for Area G
	( 1 )	(2)	(3)	(4)	Column (2) + (3) + (4) = (5)	Column (5) divided by (1) times 12
Area G (eight lignite seams )	N/A	N/A	N/A	N/A	N/A	N/A
► Area H (eight lignite seams )	N/A	N/A	N/A	N/A	N/A	N/A
Area F (eight lignite seams )	N/A	N/A	N/A	N/A	N/A	N/A

\*See Section .139 Appendices B, C &amp; E for details on the backfilling and grading criteria for F, G and H-Area

AREA H  
BACKFILLING AND GRADING  
TIME AND DISTANCE

See Section .139 Appendix E for details on  
the backfilling and grading criteria for  
H-Area

TABLE 139(b)-1

**PRIMARY SEDIMENT CONTROL STRUCTURES  
AND IMPOUNDMENT SCHEDULE**

Impoundment	Estimated Drainage Area (Ac)	Estimated Runoff (Ac-Ft)	Sediment Storage (Ac-Ft)	Estimated Volume (Ac-Ft)	Estimated Surface Area (Ac)	Approx. In Service Date	RCT Approval Date
B-17	1350.0	336.6	87.4	592.6	34.4	Existing	07/02/99
F-01*	389.7	107.7	50.0	76.8	5.1	Existing	08/29/03
F-01 TP*	NA	NA	NA	17.9	1.8	Existing	08/29/03
A-18**	416.4	89.6	180.0	248.1	15.2	Existing	07/17/18
C-04	N/A	N/A	N/A	N/A	3.3	Existing	04/05/99
C-04 TP	1.2	N/A	N/A	4.8	0.8	Existing	06/13/07
C-05**	706.0	166.6	65.4	165.4	8.9	Existing	12/05/06
C-06**	1398.5	247.0	202.7	315.7	14.0	Existing	10/23/18
H-01*	401.0	120.7	40.0	71.2	5.8	2007	12/14/10
H-01 TP*	5.5	2.3	N/A	19.8	3.3	2007	12/14/10

NOTES:(1) The estimated runoff column shows the total runoff expected from the 10-yr/24-hr rainfall.

(2) Temporary ponds are denoted with (\*).

(3) Ponds denoted above with (\*\*) are existing permanent impoundments that will be modified and were reinstated for sediment pond requirements.

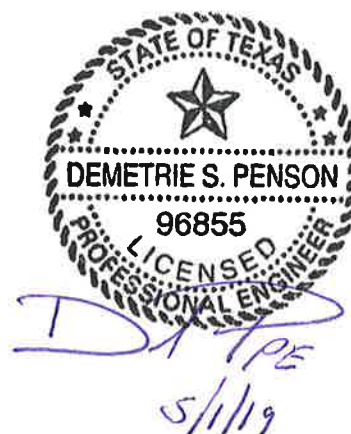




TABLE 139(b)-3

## PERMANENT IMPOUNDMENT SCHEDULE

Impoundment	Estimated Drainage Area (Ac)	Estimated Volume (Ac-Ft)	Estimated Surface Area (Ac)	Approx. Submittal Date	RCT Approval Date
* A-01	49.31	40.7	4.55	Existing	09/12/88
* A-02	3151.0	49.8	9.20	Existing	11/02/88
* A-05	3301.0	19.7	2.92	Existing	06/28/99
* A-08	16.3	11.9	2.70	Existing	11/02/88
* A-17	218.2	143.5	7.43	Existing	09/12/88
* A-18	416.4	248.1	15.20	2020	07/17/18
* B-15	420.3	216.6	11.00	Existing	02/07/89
* B-17 REANALYSIS NO. 2	1394.9	481.4	34.00	Existing	06/21/12
* B-18	878.0	248.0	12.10	Existing	02/07/89
* C-04	139.0	15.2	3.25	2020	Proposed
* C-05	700.6	155.0	8.80	2020	Pending
* C-06	1398.5	315.7	14.00	Existing	10/23/18
* C-07A	953.0	3.3	1.80	Existing	01/08/99
* D-02	971.4	90.5	9.82	Existing	01/04/07
* D-03	520.9	537.0	35.50	Existing	08/04/06
* E-01	95.5	1.8	1.22	Existing	06/08/93
* E-02	241.3	28.9	2.30	Existing	03/30/02
* E-03	202.1	96.0	11.46	Existing	05/23/05
* E-04	170.0	184.0	9.40	Existing	07/09/96
* E-05	23.8	1.0	1.90	Existing	10/31/95
* E-06	594.1	78.6	12.19	Existing	12/05/06
* E-07	165.0	138.5	9.32	Existing	12/12/03
* F-03 REANALYSIS NO. 1	375.8	36.3	7.04	Existing	05/19/15
F-05	265.0	198.0	13.10	Existing	05/19/15
F-06	8.1	0.1	0.11	2019	Proposed
F-12	196.9	113.9	11.10	Existing	05/19/15
G-13	862.1	2430.1	56.90	Existing	08/13/14
H-01	401	71.2	5.80	2023	Proposed
H-01 TREATMENT POND	5.5	19.8	3.30	2023	Proposed
H-03	198.6	450.0	18.86	2021	Proposed
* H-05	38.64	15.4	2.35	Existing	04/15/13
F-04	Removed From Reclamation Plan				
F-11	Removed From Reclamation Plan				
G-01	Removed From Reclamation Plan				
G-03	Removed From Reclamation Plan				
G-04	Removed From Reclamation Plan				
G-06	Removed From Reclamation Plan				
G-07	Removed From Reclamation Plan				
G-08	Removed From Reclamation Plan				
G-09	Removed From Reclamation Plan				
G-10	Removed From Reclamation Plan				
G-11	Removed From Reclamation Plan				
G-12	Removed From Reclamation Plan				
H-02	Removed From Reclamation Plan				
H-04	Removed From Reclamation Plan				
H-06	Removed From Reclamation Plan				

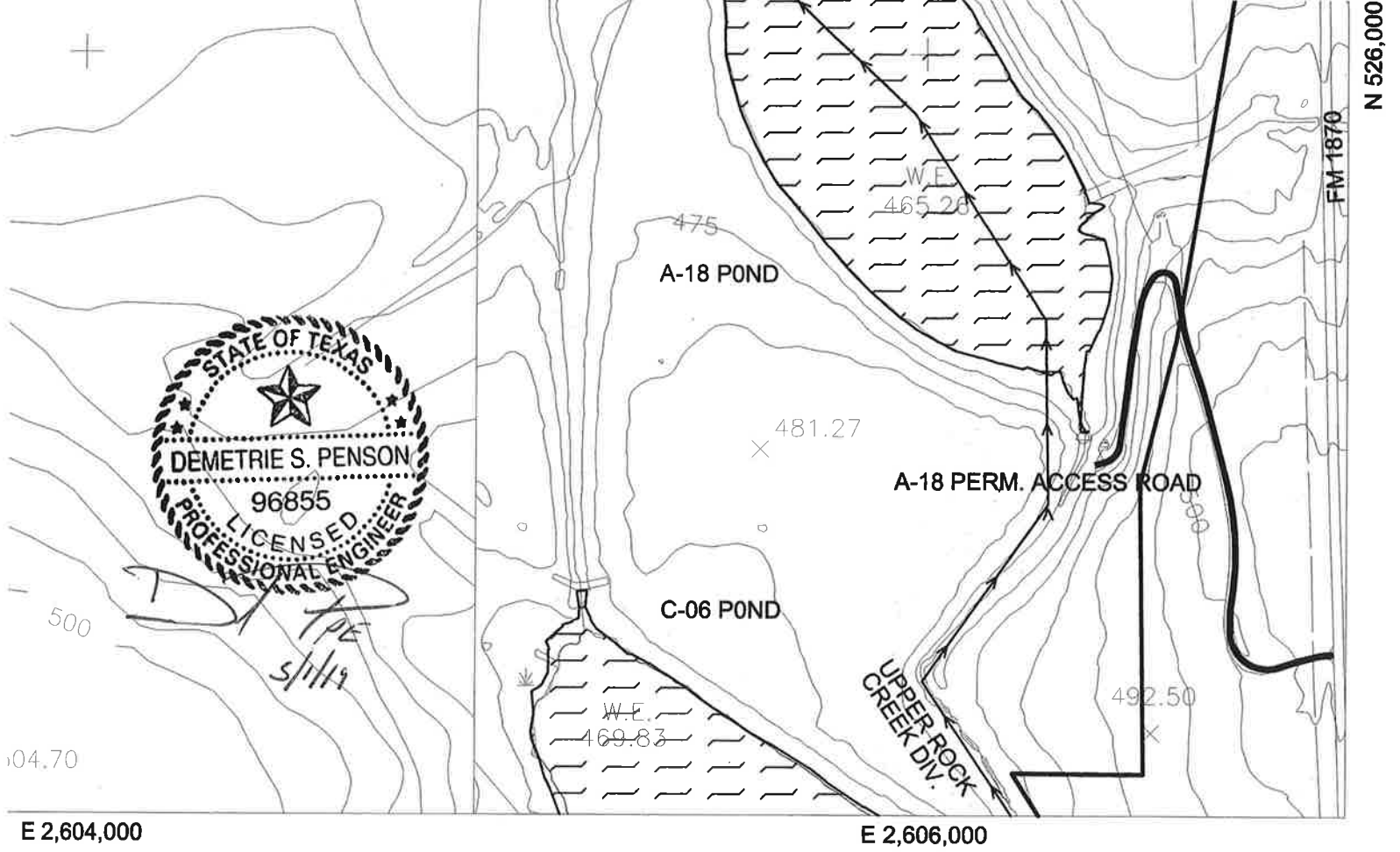
\* Existing approved permanent impoundment.




Permit No. 5G

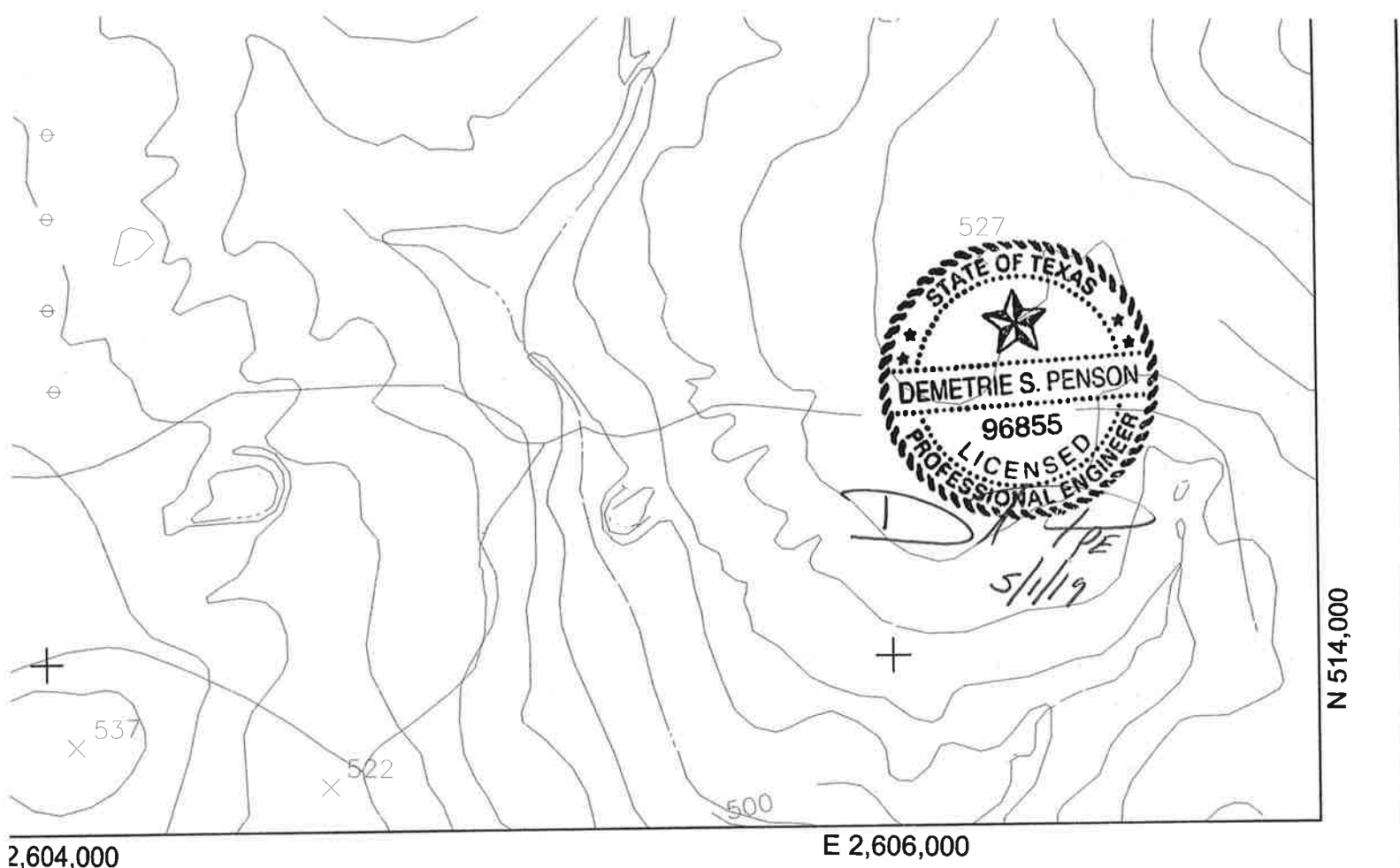
Revision No. 34


Supplemental Document No. 1



 CEMETERY BUFFER	Permit No. 5G Revision No. 34 Supplemental Doc. No. 1				THERMO MINE		5.7.19	
	MINE PLAN & OPERATIONS							
	LUMINANT MINING COMPANY LLC							
DR. BY AF	APPROVAL PENSON	DATE APR. 2019	DWG. NO. mo01 r34sd1.5G	PLATE: 139-1-1	SHEET			





	Permit No. 5G		MONTICELLO-THERMO MINE		5.7.19
	Revision No. 34				
	Supplemental Document No. 1		MINE PLAN & OPERATIONS		
	LUMINANT MINING COMPANY LLC				
DR. BY	APPROVAL	DATE	DWG. NO.	PLATE:	
AF	PENSON	APR. 2019	mo03 r34sd1.5G	139-1-3	





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PERMIT NO. 5G  
REVISION NO. 34  
SUPPLEMENTAL DOCUMENT NO. 1

**THERMO MINE**

SULPHUR SPRINGS, TX

*5.7.19*

## POSTMINE CONTOURS

LUMINANT MINING COMPANY LLC

DR. BY  
AF

APPROVAL  
PENSON

DATE  
APR. 2019

DWG. NO.  
139-2-1 r34sd1.5G

PLATE:  
139-2-1

## MONTICELLO-THERMO MINE, PERMIT NO. 5G H-AREA RECLAMATION PLAN

### **Introduction:**

Luminant Mining Company LLC proposes to utilize the following reclamation plan to complete leveling and reclamation activities in the H-Area of the Monticello-Thermo Mine. Activities associated with the reclamation plan will begin on January 1, 2020 and will be complete by October 30, 2020. The plan utilizes four suitable overburden stockpiles and two suitable material borrow areas to complete the subgrade and the top four feet of the leveled reclamation areas.

### **Reclamation Schedule:**

The reclamation of the H-Area of the Monticello-Thermo Mine will be completed in three zones. Details regarding the activities to occur in these zones are described below and shown on Table 139-E-1. This zone is depicted on Figure E-1 of this application.

### ***H-Area Suitable Material Stockpile No. 1 and 2***

H-Area Suitable Material Stockpile No. 1 and 2 serve as the storage area for the material suitable to be placed in the top four feet of reclamation. The storage areas have a maximum storage capacity of 318,000 and 430,000 lcy, respectively. The material that will remain after the appropriate volume of suitable material has been transported to Zone 1 is categorized as material suitable for the top four feet of reclamation.

### ***Zone 1 Subgrade Backfilling & Grading***

Work on Zone 1 subgrade will begin on January 31, 2020. Mobile equipment will move approximately, 750,000 cubic yards of material in Zone 1 in 183 days. Based on a productivity rate of 171 lcy/hr, Zone 1 subgrade will be complete by August 1, 2020.

### ***Zone 1 Suitable Material Placement***

Suitable material placement in Zone 1 will begin on June 1, 2020 and will last 151 days from commencement. Mobile equipment will move approximately 36,200 and 69,600 cubic yards of suitable material from Zone 2 and Zone 3 respectively, to be placed in the top four feet of Zone 1. Based on a productivity rate of 10 lcy/hr and 19 lcy/hr, this reclamation activity is projected to be completed on October 30, 2020.

In addition to the previous activity, 326,600 cubic yards will be recovered from H-Area Suitable Material Stockpile No. 1 and 87,300 from H-Area Suitable Material Stockpile No. 2 and placed in the top four feet of Zone 1. Based on a productivity rate of 90 lcy/hr and 24 lcy/hr respectively, this reclamation activity will last 151 days and is projected to be completed on October 30, 2020.

### ***Zone 2 Suitable Material Leveling***

As previously mentioned, approximately 36,200 cubic yards of suitable material will be hauled from Zone 2 to Zone 1. Dozers will level the suitable material as it is delivered to Zone 1 in order to

establish the postmine topography in Zone 1. The leveling of Zone 2 will be completed at a productivity rate of 10 lcy/hr. Based on the aforementioned productivity rates, final grading will be completed in 151 days of commencement and is projected to be complete by October 30, 2020.

### ***Zone 3 Suitable Material Leveling***

Approximately 69,600 cubic yards of suitable material will be hauled from Zone 3 to Zone 1. Dozers will level the suitable material as it is delivered to Zone 1 in order to establish the postmine topography. The leveling of Zone 3 will be completed at a productivity rate of 19 lcy/hr. Based on the aforementioned productivity rates, final grading will be completed in 151 days of commencement and is projected to be complete by October 30, 2020.

### ***Deep Ripping Plan***

Luminant recognizes the proposed suitable top four feet could have compaction characteristics that could be a limiting factor of post mine productivity. While it is not anticipated, dozers equipped with rippers in combination with disking equipment will be used to loosen the remaining material in the suitable layer if this situation is encountered. The aforementioned equipment will cultivate the suitable layer to ensure a minimum of the top four feet is in the appropriate condition for the revegetation phase of the approved reclamation requirements. After reclamation of Zones 2, 3, and Stockpiles No. 1 through 4 is complete, the areas will be reclaimed following the same reclamation plan, soil testing plan, and revegetation plan as used for all other disturbed areas within the permit boundary.

### ***H-03 Pond***

The H-03 Pond is the permanent impoundment scheduled to be constructed in the H-Area of the Thermo Mine. During construction of the spillway, Luminant will develop H-Area Stockpile No. 3 and 4 to contain suitable material recovered from the proposed spillway location. Detailed design plans for this pond is scheduled for submittal to the Railroad Commission of Texas by December 30, 2020. The proposed submittal date will provide Luminant adequate time to recover survey information from the completed backfilling and grading and incorporate the information into the detailed design plans. After approval of the detail design plans and completion of the subgrade and suitable material leveling of each zone of the H-Area Reclamation Plan, Luminant will begin the construction of the inlet and outlet features of the aforementioned pond.

Once final backfilling and grading is complete, each zone will be planted with permanent vegetation during the first normal period of favorable planting conditions. All disturbed runoff from the H-Area will continue to be routed to the H-01 Sedimentation Pond prior to release from surface water control.

All dirt volumes and dates of completion for each area are approximate and may fluctuate somewhat due to unanticipated weather delays. If changes to the reclamation time schedule are necessary, a request will be submitted to the Commission.

**Table 139 E-1  
Thermo H-Area Reclamation Plan**

Zone (acres)	Task	Activity	Req'd Equipment Productivity (lcy/hr)	Material Quantity (cy)	Source of Material	Activity Time Frame (days)	Anticipated Completion Date	Estimated Haul Distance (feet)
1 (73.9 ac)	Reclamation	Subgrade Haul/Leveling	171	750,000	Zone 1	183	8/1/2020	1,200
1	Reclamation	Suitable Material Haul/Leveling	90	326,600	H-Area Stockpile No. 1	151	10/30/2020	1,700
		Suitable Material Haul/Leveling	24	87,300	H-Area Stockpile No. 2	151	10/30/2020	1,000
		Suitable Material Haul/Leveling	10	36,200	Zone 2	151	10/30/2020	900
		Suitable Material Haul/Leveling	19	69,600	Zone 3	151	10/30/2020	1,600
2 (4.3 ac)	Reclamation	Suitable Material Removal/Leveling	10	36,200	N/A	151	10/30/2020	900
3 (7.1 ac)	Reclamation	Suitable Material Removal/Leveling	19	69,600	N/A	151	10/30/2020	1,600
	Design	H-03 Pond Design	N/A	N/A	N/A	60	12/30/2020	N/A

**Equipment Information**

NOTE: All dirt volumes and dates of completion for each area are approximate and may fluctuate somewhat due to unanticipated weather delays, lignite production changes, and power plant demand fluctuations. If changes to the reclamation time schedule are necessary, a request will be submitted to the Commission.

**Table 139 E-2  
H-Area Suitable Material Availability**

<b>Zone (acres)</b>	<b>Recoverable Suitable Material (cu-yds)</b>	<b>Required Suitable Material (cu-yds)</b>
1 (73.9 acres)	36,900	512,669
2 (4.3 acres)	66,031	29,831
3 (7.1 acres)	118,855	49,255
H-Area SP 1 (9.1 acres)	379,330	63,130
H-Area SP 2 (14.3 acres)	178,204	99,204
<b>Totals</b>	<b>779,319</b>	<b>754,088</b>

**Additional Information**

- 1) Required suitable material for reclamation assumes 4.3-ft of suitable material will be placed on backfilled and graded subgrade reclamation.

**SECTION 12.146(d)**

**PROBABLE HYDROLOGIC CONSEQUENCES DETERMINATION  
MONTICELLO-THERMO MINE  
PERMIT 5G  
REVISION NO. 34  
SUPPLEMENTAL DOCUMENT NO. 1  
HOPKINS COUNTY, TEXAS**

**APRIL 2019**

*Prepared for:*

**LUMINANT MINING COMPANY LLC  
6555 Sierra Dr.  
Irving, Texas 75039**

*Prepared by:*

**GOLDER ASSOCIATES INC.  
2201 Double Creek Dr., Suite 4004  
Round Rock, Texas 78664  
(512) 671-3434**



**PBW Project No. 1224**

**Texas Geoscience Firm No. 50369**



## LIST OF TABLES

<u>Table</u>	<u>Title</u>
146(d)-1	Water Wells Within the Simulated Five-Foot Drawdown Contour
146(d)-2	Proposed Long-Term Groundwater Monitoring Wells
146(d)-3	Average Curve Numbers (CN) for Pre-, During-, and Post-Mine Conditions
146(d)-4	Predicted Storm Event Runoff Volumes
146(d)-5	Predicted 10-Year, 24-Hour Storm Event Sediment Yields
146(d)-6	Summary of Paired Watershed Water Quality Data, 1996-2005
146(d)-7	Summary of Long-Term Surface Water Monitoring Program
146(d)-8	Final Discharge Pond Monitoring Program
146(d)-9	Final Discharge Outfalls, TPDES Permit No. 04122
146(d)-10	Paired Watershed Morphometric Analyses

## LIST OF FIGURES

<u>Figure</u>	<u>Title</u>
146(d)-1	Maximum Extent of 5 Feet of Simulated Drawdown
146(d)-2	Proposed Long-Term Groundwater Monitoring Wells
146(d)-3	Surface Water PHC Watershed Boundaries and Long-Term Monitoring Stations
146(d)-4	Typical Long-Term Stream Monitoring Station

## LIST OF APPENDICES

<u>Appendix</u>	<u>Title</u>
146(d)-A	Water-Level Data for Long-Term Groundwater Monitoring Wells
146(d)-B	Groundwater Chemistry Data for Long-Term Monitoring Wells
146(d)-C	Areally Weighted Curve Numbers for West Expansion Area Watersheds
146(d)-D	Sedimentologic Data for West Expansion Area Watersheds
146(d)-E	Sediment Load Computations for West Expansion Area Watersheds
146(d)-F	Water-Quality Data from Long-Term Surface Water Monitoring Stations, 1996-2005
146(d)-G	Water-Quality Data from Individual Ponds, 2003-2006
146(d)-H	Rating Curves, Tables and Cross Sections for LTSM Stations
146(d)-I	Assessment of Hydrologic Conditions at H-03 Pond and Surrounding Area *
	* <i>this appendix contains a technical memorandum evaluating the hydrologic conditions in the vicinity of the H-03 pond</i>

**APPENDIX 146(d)-I**

**TECHNICAL MEMORANDUM  
ASSESSMENT OF HYDROLOGIC CONDITIONS AT H-03 POND  
AND SURROUNDING AREA**

## TECHNICAL MEMORANDUM

TO: Luminant Mining Company LLC (Luminant)  
FROM: Keith Wheeler, P.G. – Pastor, Behling & Wheeler, LLC  
DATE: May 14, 2018  
  
RE: Assessment of Hydrologic Conditions at H-03 Pond and Surrounding Area  
Thermo Mine, Hopkins County

As requested, I (Keith Wheeler) visited the Thermo Mine on May 9, 2018 to assess the hydrologic conditions at the H-03 Pond and surrounding terrain, including a nearby soil stockpile. It is my understanding that RRC staff expressed concerns to Luminant during a recent meeting about acid seepage emanating from the soil stockpile, draining into the H-03 Pond, and lowering the pH of the pond. The primary purpose of my investigation was to: 1) identify and characterize the nature of any seeps in the area and 2) determine the likely cause of the low pH conditions in the H-03 Pond.

### SUMMARY OF SITE INSPECTION AND OBSERVATIONS

During the site visit, I was accompanied by Luminant employees from the Monticello Mine (Mr. Monty Ward and Mr. Bill Mason). An aerial photograph showing the locations of the H-03 Pond and nearby soil stockpile is provided as Figure 1. Photographs taken during the site visit are provided in Attachment A.

A pH measurement of 3.9 was taken from the pond at the approximate location shown on Figure 1. According to Luminant personnel, previous pH measurements from the pond had ranged from about 3.9 to 5.5, with the higher pH values coinciding with higher pond levels. The pond level was relatively low during the site visit.

Groundwater seeps were observed emanating from some erosional features along the northwestern slopes adjacent to the pond. The seep origin was about halfway up the unreclaimed slopes. No seepage was observed coming from the southeastern corner of the soil stockpile. Seep photos are provided in Attachment A. Two seep pH measurements were taken at the approximate locations shown on Figure 1. A pH of 6.4 was measured in the seepage closest to the pond. Closer to the seep source, the seepage had a pH of 6.7. We were not able to walk the entire perimeter of the pond due to access issues, so other similar seeps may exist. Luminant personnel had driven the entire perimeter of the soil stockpile the previous day and not observed any seeps emanating from its base.

Abundant lignitic material was observed on the ground in the unreclaimed area surrounding the pond (see photos in Attachment A). Exposed lignitic material and seams are also likely in contact with pond water.

#### REVIEW OF BASELINE GROUNDWATER INFORMATION

The closest overburden baseline groundwater well to the H-03 Pond is TLT-13-OB (see Figure 1). As reported in Section 128 of the Thermo Mine Permit, the water table was encountered less than five feet below ground surface when measured during the baseline period in 2005 (Table 128-4). The groundwater elevations ranged from an elevation of about 490 to 492 feet above mean sea level. Table 128-5 in Section 128 shows that the pH of TLT-13-OB ranged from about 6.7 to 7.1, indicating that the shallow overburden groundwater system has a neutral pH.

#### DISCUSSION OF FINDINGS

My answers to the following question are based on my recent site visit, discussions with Luminant personnel, review of baseline reports, and professional experience.

***Question 1. What is causing the low pH conditions in the H-03 Pond?***

The pH of the H-03 Pond appears to be low due, to a minor extent, to surface runoff coming into contact with the exposed lignitic material in the unreclaimed material surrounding the pond and, to a larger extent, the exposed seams and associated carbonaceous materials inside the pond.

***Question 2. Is the groundwater seepage into the pit lowering the pond pH***

No, the native groundwater seeping into the pond has a neutral pH and, if anything, is raising the pH of the pond. The seepage observed during my site visit is consistent with the presence of shallow, neutral pH groundwater identified in the area during the baseline studies.

***Question 3. Are low pH seeps emanating from the soil stockpile?***

No, low pH seeps have not been observed at the base of the soil stockpile.

***Question 4. Is the pH of the H-03 Pond likely to improve after the area is reclaimed?***

It is my understanding that Luminant will cover the exposed lignitic material with four feet of suitable material in accordance with the approved reclamation plan. I also understand that Luminant typically uses suitable material to cover the sides of the pit at least 10 feet below the normal pool level. Following these reclamation activities, it is likely the pH of the H-03 Pond will increase. Other ponds at the Thermo mine exhibit near-neutral pH conditions following reclamation activities.

Please call me at (512) 671-3434 if you have any questions about the contents of this technical memorandum or would like to discuss my findings in more detail.

Keith Wheeler  
Principal Hydrogeologist  
Pastor, Behling & Wheeler LLC

Texas Geoscience Firm No. 50248



FIGURE 1: AERIAL IMAGE OF H-03 POND AND SURROUNDING AREA (THERMO MINE)



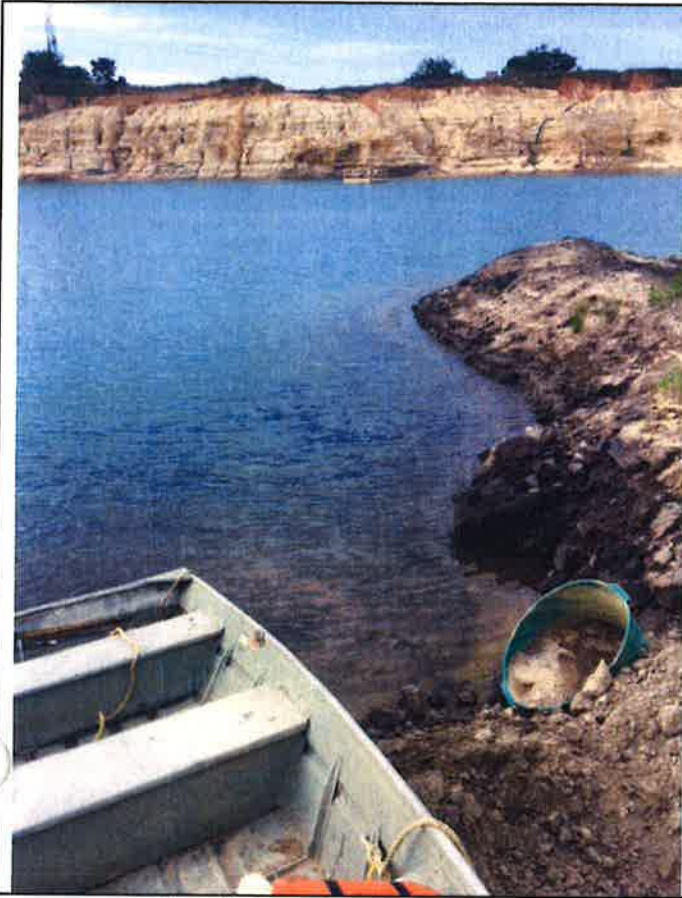
**ATTACHMENT A**

**PHOTOGRAPHS**



## Attachment A

### Photographs of H-03 Pond and Surrounding Area at the Thermo Mine (Photographs taken May 09, 2018)



H-03 Pond. pH reading of 3.9 was taken near shoreline.



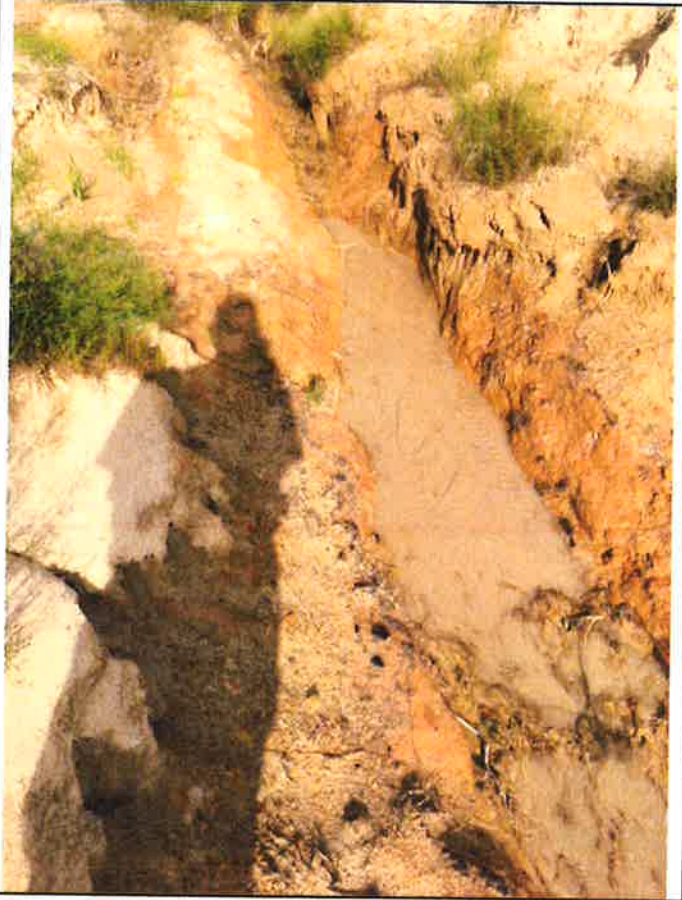
Groundwater seepage flowing into H-03 Pond

## Attachment A

### Photographs of H-03 Pond and Surrounding Area at the Thermo Mine (Photographs taken May 09, 2018)



Groundwater seepage near H-03 Pond, pH = 6.4

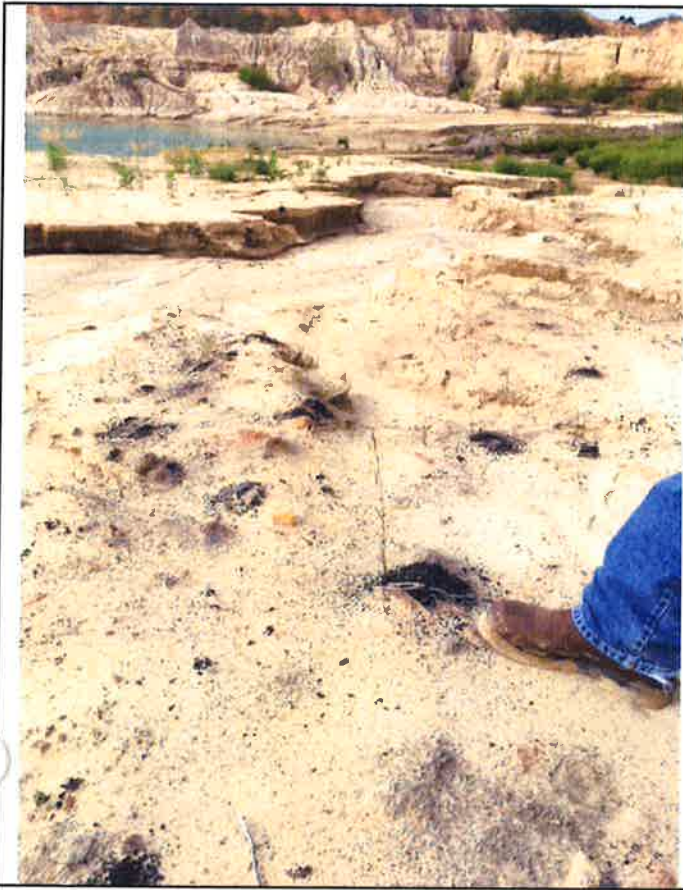


Groundwater seepage near source area, pH = 6.7

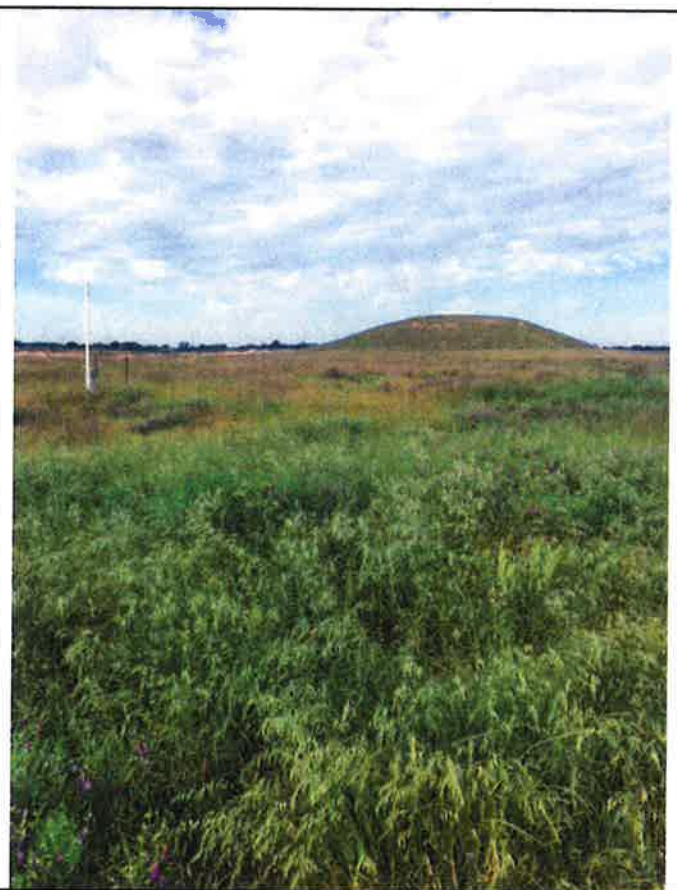


## Attachment A

### Photographs of H-03 Pond and Surrounding Area at the Thermo Mine (Photographs taken May 09, 2018)



Lignitic material at ground surface near H-03 Pond



Photograph of Soil Stockpile located northwest of H-03 Pond.



Permit No. 5G Revision No. 34 Supplemental Document No. 1		MONTICELLO—THERMO MINE		5.7.19	
SURFACE WATER CONTROL PLAN					
LUMINANT MINING COMPANY LLC					
DR. BY AF	APPROVAL PENSON	DATE APR. 2019	DWG. NO. 148-1 r34sd1.5G	PLATE: 148-1	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100



**Sid Stroud**  
Manager, Mine Compliance  
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6555 Sierra Drive  
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**T** 214.875.9129  
**C** 214.729.2171  
**F** 214.875.8699

April 18, 2019

Mr. Alexander C. Schoch, Interim Director  
Surface Mining and Reclamation Division  
Railroad Commission of Texas  
P.O. Box 12967  
Austin, Texas 78711-2967

Railroad Commission  
of Texas  
RECEIVED

APR 22 2019

Surface Mining Division

RE: Luminant Mining Company LLC ("Luminant")  
Monticello-Thermo Mine, Permit No. 5G  
Revision Application No. 34  
H-Area Final Pit Reclamation Plan

Dear Mr. Schoch:

By letter of September 21, 2018, the Commission responded to Luminant's February 15, 2018 request that the subject application be processed administratively. In this letter Director Denny Kingsley provided a legal opinion by Staff Attorney David Cooney regarding our request and noted that processing of the suspended application will proceed once response is provided to the issues identified by Staff's letter of January 19, 2018, or if Luminant wished to proceed with processing the application as a significant revision (see below).

*"Processing of the application, which was suspended as noted in our January 19, 2018 letter, pending resolution of the noted issues that render the application deficient and precluded processing of the application as an administrative revision, will proceed once a response is provided to these issues, or if you inform me that you wish to proceed with processing the application as a significant revision."*

This letter is to inform the Commission that Luminant does not wish to proceed with processing as a significant revision but rather intends to respond to the noted issues of January 19, 2018 that rendered the application deficient and precluded processing as an administrative revision. Preparations are being concluded and we anticipate providing our response by May 1, 2019.

Please contact me if there you have any questions.

Sincerely,  
A handwritten signature in black ink, appearing to read "Sid Stroud", is written over the word "Sincerely,".  
Sid Stroud

SS/SS/tg